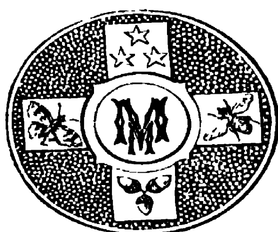
PRIMITIVE PROPERTY.



PRIMITIVE PROPERTY,

TRANSLATED FROM THE FRENCH OF

EMILE DE LAVELEYE,

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BY

G. R. L. MARRIOTT, B.A., LL.B.

WITH AN INTRODUCTION BY

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OF LINCOLN'S INN, BARRISTER-AT-LAW.

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PREFACE TO THE PRESENT EDITION.

I AM indebted for the translation of the present edition to Mr Marriott of Trinity College, Cambridge, who spontaneously undertook the task. At my request Mr Cliffe Leslie has written an Introduction to the work. In making this request I was aware that Mr Leslie's views with reference to some practical aspects of the subject were not identical with my own, but I felt sure that his attainments as a Professor of both Jurisprudence and Political Economy, and his extensive knowledge of legal and economic history, would enable him to introduce the historical development of property instructively to the reader, and to throw some fresh light upon it.

I have only to add that the additions and alterations in the present edition make it in several respects almost a new work.

EMILE DE LAVELEYE.

LIEGE, *November*, 1877.

INTRODUCTION.

By T. E. CLIFFE LESLIE.

M. DE LAVELEYE'S present work has two distinct aspects, historical and practical. On the one hand, it investigates the early forms of landed property in a number of societies, European, Asiatic, African, and American. On the other hand, it raises a practical problem, the importance of which will be admitted by readers who may dissent from M. de Laveleye's views with respect to its solution. A study of the course followed by the development of property from the infancy of society has led to two opposite lines of inference and thought—represented respectively by Sir Henry Maine and M. de Laveleye—with regard to its present forms in most civilized countries; but the historical researches of both these eminent writers coincide in establishing that the separate ownership of land is of modern growth, and that originally the soil belonged in common to communities of kinsmen.

The property of which M. de Laveleye treats in this volume is property in land; of all kinds of property that which has most deeply affected both the economic condition and the political career of human societies. In one sense indeed land was not primitive

property; it was not man's earliest possession or wealth. The first forms of property are lost in the mist that surrounds the first infant steps of the human race. Wild herbs, fruit, berries, and roots were probably the earliest acquisitions, but the food thus obtained was doubtless devoured at once. When at length providence was developed so far as to lead to the laying by of some sustenance for the future, the inference to which the earliest developments of movable wealth, of which we get glimpses, unmistakably point, is that the store which individuals might thus accumulate would not have been regarded as their own absolute property, but as part of the common fund of the community, larger or smaller according to circumstances, of which they were members. Before land had been definitely appropriated by tribes or smaller groups, movables of many sorts had been successively added to the stock of human possessions—new descriptions of food, implements and weapons, ornaments, the rudiments of clothing, fuel, captured and domesticated animals, human slaves, vehicles, boats, tents, and other movable dwellings. The importance of some of these early kinds of property to the progress of mankind is illustrated by the probability that the domestication of animals, and the acquisition thereby of a constant supply of animal food, contributed more than any other agency to the cessation of cannibalism. And a mass of evidence converges to the conclusion that the chief of these various chattels were possessed in co-ownership by families or larger communities, held together by blood or affinity. The bearing of this proposition on the nature of the ownership of land

in early society is obvious, and it has also a relation to the practical aspects of the subject which M. de Laveleye discusses. Some evidence in support of it may therefore be appropriately adduced in the present Introduction; the more so that an opinion seems to prevail, even among scholars familiar with the true beginnings of property in land, that movable property in primitive society belonged from the first to individuals.

In the ancient laws of Ireland the whole tribe has "live chattels" and "dead chattels," as well as common lands. Among the Eskimos of Greenland, according to Dr Rink's account of their ancient usages, a house was the joint property of several families; a tent, a boat, and a stock of household utensils and articles for barter were owned in common by one or more families; the flesh and blubber of captured seals belonged to a whole hamlet, while larger animals such as whales were shared among the inhabitants of neighbouring hamlets; and custom strictly limited the quantity of clothes, weapons, tools, and other articles of personal use, that a single individual could keep to himself. "If a man had anything to spare it was ranked among the goods possessed in common with others." Among the Nootkas of North America, we are told by Mr Bancroft, though food is not regarded as common property, "any man may help himself to his neighbour's store when needy." Sir Henry Maine and M. de Laveleye have shewn that a joint table, with meals partaken in common by several families, is an archaic usage once prevalent throughout Europe and not extinct at this day among the Southern Slavs;

and M. de Laveleye, with great probability, traces to it the common repasts in ancient Greece which historians have been accustomed to ascribe to the policy of legislators. Again, down at least to the fourteenth century, groups of English peasants, sometimes a whole village, had chattels such as horses, oxen, ploughs, boats, in common; a joint proprietorship which to the modern eye may look at first like a species of co-operation for convenience, but which it is more in conformity with the ideas and practices of early society to regard as a survival of the co-ownership of movables by kinsmen settled together, as we know the inhabitants of English villages in many cases originally were. Another fact pointing in the same direction is that in ancient Germany the compensation in cattle for a homicide or outrage went to the kindred, and the eric-fine of Irish law went partly to the whole sept, and partly to the chief as its head. Much evidence collected by recent inquiries into the usages of uncivilized communities at the present day, seems to lead us back to a stage of human development at which women not only were considered as chattels, but were themselves owned as such in common by clans, septs, or smaller groups of kinsmen; and the ancient Irish laws contain indications to the same effect. The honour price of an abducted woman was paid according to the Book of Aicill, in part to her chief and her relatives; and her children belonged to her family, who might sell them or not as they pleased. The infrequency of exchanges, the absence of coin and other divisible currency for small individual purchases, the use of cattle and slaves in the earlier stages of

society, as a medium of payment, point in like manner to the absence of individual property in chattels. Commercial transactions took place between groups, or at least whole families, not between individuals. We may find here, I venture to suggest, the true explanation, though Mommsen gives a different one, referred to by M. de Laveleye, of the distinction, so long maintained in Roman law, between Res Mancipi, requiring a solemn ceremonial for their transfer, and those later or less important kinds of property called Res nec Mancipi, which were transferable by simple delivery. Res Mancipi included slaves, horses, asses, mules, oxen, lands in Italy, but not coin, jewels, lands beyond Italy, and many other possessions, either entirely unknown to the primitive Romans, or not deemed of such importance as to require the forms of Mancipatio for their transfer. The original distinction, I apprehend, lay between things that were common property, and things that were allowed to belong to individuals.

A limited stock of certain things for personal use was early permitted, and accordingly weapons, food, and other articles for his journey to another world, were placed in the warrior's grave, though it is a curious inquiry whether similar provision was made for a woman on her departure. This explanation of the formalities accompanying the transfer of Res Mancipi is quite in harmony with Sir H. Maine's exposition of the solemnities accompanying the commercial transactions of primitive associations. "As the contracts and conveyances known to ancient law are contracts and conveyances to which not single in-

dividuals, but organized companies of men are parties, they are in the highest degree ceremonious; they require a variety of symbolical acts and words intended to impress the business on the memory of all who take part in it, and they demand the presence of an inordinate number of witnesses[1]."

No mere psychological explanation of the origin of property is, I venture to affirm, admissible, though writers of great authority have attempted to discover its germs by that process in the lower animals. A dog, it has been said, shews an elementary proprietary sentiment when he hides a bone, or keeps watch over his master's goods. But property has not its root in the love of possession. All living beings like and desire certain things, and if nature has armed them with any weapons are prone to use them in order to get and keep what they want. What requires explanation is not the want or desire of certain things on the part of individuals, but the fact that other individuals, with similar wants and desires, should leave them in undisturbed possession, or allot to them a share, of such things. It is the conduct of the community, not the inclination of individuals, that needs investigation. The mere desire for particular articles, so far from accounting for settled and peaceful ownership, tends in the opposite direction, namely, to conflict and the right of the strongest. No small amount of error in several departments of social philosophy, and especially in political economy, has arisen from reasoning from the desires of the individual, instead of from the history of the community.

[1] *Ancient Law*, p. 271.

A more promising line of inquiry might at first sight appear to be one to which Sir Henry Maine has alluded in *Ancient Law.* Observing that the question proposed by many theorists respecting the origin of property is—what were the motives which first induced men to respect each other's possessions?—he adds that "the question may still be put, without much hope of finding an answer, in the form of an inquiry into the reasons that led one composite group to keep aloof from the domain of another composite group[1]." Within each composite group men originally, it may be affirmed, did not "keep aloof from each other's domain," for there was, in fact, no such separate domain. The idea, so far as any definite idea on the subject was dimly conceived, could only be that the group was an indivisible corporation, one in blood, property and customs. Nor was it until a great advance in civilization had been made, that one community recognized any right whatever, collective or individual, on the part of the members of another community of different blood or origin, to their domain or other possessions, or even to life or liberty. Property in the infancy of social progress consisted, one may say, simply in a feeling of unity and consequent co-ownership on the part of the men of a tribe, horde, clan, sept, or family; the size of the group being conditioned in a great measure by the means of subsistence and other environing circumstances. So long as such a community led a wandering life, the co-ownership would be felt only in movables. But as its boundaries became circumscribed by its own growth,

[1] *Ancient Law*, p. 270.

or by the neighbourhood of other communities, and its place of habitation in some degree fixed by the needs of incipient agriculture, landed property began to develop itself in the primitive forms set before us by M. de Laveleye in the present work, which affords one of the most brilliant examples in literature of the application of the comparative method to historical investigation.

Sir Henry Maine in his lectures at the Middle Temple was, I believe, the first to lay down with respect to landed property the general proposition, afterwards repeated in his *Ancient Law*, that "property once belonged not to individuals, nor even to isolated families, but to larger societies[1]." But proof of this proposition in detail exceeded the powers and opportunities for research of any single inquirer, and needed a number of original investigations in different parts of the world. One link in the chain, unknown to Sir Henry Maine, had already been forged by some profound Danish scholars, especially Oluf Christian Olufsen, who discovered from ancient legal records, the original co-ownership and common cultivation of the soil of Denmark and Holstein by village communities. Their investigations were followed by the celebrated researches of Haxthausen, Hanssen and Georg L. von Maurer, in Germany. Professor Nasse of Bonn is entitled to the renown of having been the first to prove that in England, as in the German fatherland, groups of husbandmen cultivated the ground and fed their herds and flocks on a co-operative system which bears all the marks of descent

[1] *Ancient Law*, p. 268.

from the primitive communal usages of the Teutonic race. Domesday had been so imperfectly studied before Mr Freeman's day, and other English documentary records had preserved so few traces of the primitive co-ownership and common use of land by village communities, that historians had been accustomed to follow the assumption of lawyers, that the rights of common surviving to modern times, grew up by sufferance on the part of the lords of Manors. Mr Freeman has cited an instance from Domesday, of the men of a village community or township holding common land at Goldington in Bedfordshire; adding that such cases must have been far more usual than the entries in that great survey would lead us to think[1]. Professor Nasse has reproduced the rural economy and system of common husbandry that grew in some cases out of such common proprietorship, in other cases out of the common tenure of lands granted to individual owners in chief, but settled and cultivated on the same plan as those which belonged at first to the members of whole townships in common. Meanwhile, Sir Henry Maine's residence for several years in India, had enabled him to collect fresh evidence from existing forms of Hindoo property and social organization, in support of his original doctrine, that the collective ownership of the soil by communities larger than families, but held together by ties of blood or adoption, was in eastern as well as in western countries the primitive form of the ownership of the soil. Sir H. Maine's conception of ancient society and its institutions, it may be observed—and

[1] *History of the Norman Conquest*, v. 463.

the observation applies also to the theory which M. de Laveleye illustrates by so many striking examples in this work—is nowise invalidated by proof on the part of other investigators like Bachofen, Herbert Spencer, Sir John Lubbock, Mr Tylor, Mr McLennan, M. Giraud Teulon and Mr Lewis Morgan, of antecedent states of human association, before the earliest stage of inchoate civilization had been reached, or the family, as we understand the term, had been formed. The institutions that Sir H. Maine and M. de Laveleye call primitive, are so in the sense at least of being the earliest usages of society emerged from savagery, and in some degree settled. And M. de Laveleye's work affords a magnificent example of the immense range of investigation for which there was room in respect of one of the chief of those institutions. However widely some of his readers may dissent from his views with respect to the modern distribution of landed property, there will be but one opinion respecting the breadth of research and learning with which he has illustrated its primitive forms. To the evidence previously collected by Sir H. Maine and the Danish and German scholars already referred to, he has added proofs gathered from almost every part of the globe. Ancient Greece and Rome, Medieval France, Switzerland, the Netherlands, Russia, the southern Slav countries, Java, China, part of Africa, central America, and Peru, are among the regions laid under contribution. Slavs, says M. de Laveleye, "boast of the communal institutions of the village community as peculiar to their race, and destined to secure its supremacy, by preserving it from the social

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struggles impending over the States of Western Europe; but when it is proved, that similar institutions are to be found in all ages, in all climates, and among the most distinct nations and races, we must see in their prevalence a necessary phase of social development and a universal law, as it were, presiding over the evolutions of the forms of landed property." It should not, however, be overlooked that the stage of development in which such institutions are natural, is a primitive one, and that their retention may be a mark not of superiority, but of backwardness, like the retention of those first implements to which M. de Laveleye alludes, and which in the age of stone were universal.

The term "natural" has been indeed a source of so much confusion and error in both the philosophy of law and political economy, that it might be well to expel it altogether from the terminology of both; but it could not be more legitimately applied than in the proposition that there is a natural movement, as society advances, from common to separate property in land as in chattels. This movement is perceptible among the Slav nations themselves, and it is closely connected with the movement from status to contract which Sir H. Maine has shewn to be one of the principal phases of civilization. Since the emancipation of the Russian peasantry, as M. de Laveleye observes, "the old patriarchal family has tended to fall asunder. The sentiment of individual independence is weakening and destroying it. The married son longs to have his own dwelling. He can claim a share of the land, and as the Russian peasant soon builds himself a house

of wood, each couple sets up a separate establishment for itself. The dissolution of the patriarchal family will perhaps bring about that of the village community, because it is in the union of the domestic hearth that the habits of fraternity, the indifference to individual interest, and the communist sentiments which preserve the collective property of the *mir*, are developed." And in like manner M. de Laveleye ends a highly interesting description of the structure and life of the family communities among the Southern Slavs as follows: "The flourishing appearance of Bulgaria shews decisively that the system is not antagonistic to good cultivation. And yet this organization, in spite of its many advantages, is falling to ruin, and disappearing wherever it comes in contact with modern ideas. The reason is that these institutions are suited to the stationary condition of a primitive age; but cannot easily withstand the conditions of a state of society in which men are striving to improve their own lot as well as the political and social organization under which they live. I know not whether the nations who have lived tranquilly under the shelter of these patriarchal institutions, will ever arrive at a happier or more brilliant destiny; but this much appears inevitable, that they will desire, like Adam in *Paradise Lost*, to enter on a new career, and to taste the charm of independent life, despite its perils and responsibilities."

Familiar as Englishmen are with Switzerland in its physical aspects, and with those features of its social life that meet the eye of the visitor, the very name of the Swiss *Allmend*, originally signifying the property of all, is probably known only to those who have

studied M. de Laveleye's works. A large part of the land of each Swiss commune is preserved as a common domain, called the *Allmend*, respecting which the reader will easily obtain from M. de Laveleye's pages information which is not to be got elsewhere. M. de Laveleye points to it as an example of the possibility of reconciling the primitive system of common property and equality of wealth, with the modern system of individual ownership and great inequality of fortune. The chapters in the volume on this subject will repay careful study, but there are two points that ought not to escape observation. One is that there are indications of a tendency even in Switzerland—which stands alone in the world as a land that has maintained both the free political institutions and the communal system and property of the times before feudalism—towards a disintegration of the *Allmend*. Thus in the canton of Glaris "at the present day, the commonable *alps* are let by auction for a number of years: and in complete opposition to ancient principles, strangers may obtain them as well as citizens." The other point is one which the last words of the passage just cited suggest. Some of M. de Laveleye's expressions might convey the idea that an original instinct of justice, and a respect for "natural rights" and equality, are discoverable in the primitive usages of society relating to property. Yet such language needs some interpretation to make it appropriate. The only rights which men in early society recognized were those of the community to which they belonged. These rights ran in the blood, as it were, and were confined to fellow-tribesmen or kinsmen. The stranger had no share in the

common territory, no natural right as a fellow-man to property of any kind or even to liberty. And within the community, equality was confined to one sex, even after the family, as we know it, had been founded, and a partition of arable land had been made. "Everywhere," in M. de Laveleye's words, "the daughters are excluded from the succession. The reason of this exclusion is manifest. If females inherited, as by marriage they pass into another family, they would effect a dismemberment of the joint domain, and the consequent destruction of the family corporation."

Modern communism finds no precedent in the institutions of early society, its conceptions and aims are of purely modern origin; and it neither can justify them on the ground of conformity with original sentiments of justice, nor, on the other hand, can be charged with going back to barbarism for its theory of rights. The original ownership of movables by communities shews that the early usages of mankind are not models for our imitation. If separate property in land is contrary to primitive ideas and institutions, so is the separate ownership of chattels and personalty of every description. If indeed we ought to revert to common property in land because it is primitive, why not also to communism in women, if that too can be shewn to have been the primitive system? The truth is that the early forms of property were natural only in the sense of being the natural products of an early state of the human mind. The forms natural in the present state of society are those in conformity with the development of human reason and with modern civiliza-

tion. Some phrases in the present work might seem to indicate a desire on M. de Laveleye's part to return to the primitive co-ownership of the soil, but this he expressly disclaims. The real ground on which he builds his practical doctrines is the modern one of policy and expediency. He sympathizes with the equality of fortunes maintained in early society, but his counsels to modern society are based on the dangers that threaten it from enormous inequality of property in an age in which all men are becoming equal in political power, and sovereignty is passing into the hands of those who possess least, because they are the most numerous. Nor can it be denied that the unequal distribution of landed property in the British Islands especially, has been the result, in no small degree, not of social development or natural evolution in that sense, but of violence and usurpation in past times, and the maintenance down to our own time of a system of law derived from them.

The fact that Sir H. Maine and M. de Laveleye look with different eyes on the primitive usages of society is easily intelligible. The tendency of agriculture, commerce, and invention, of the development alike of human wants and aspirations, and of human faculties, is not only towards individual property, but towards inequality of property; and for my own part I see no greater injustice in unequal riches than in unequal strength or intellectual power. But the actual inequalities of fortune, and of landed property especially, have sprung also from other very different causes which M. de Laveleye describes. The result of the combined operation of both sets of causes is that where

Sir H. Maine sees progress and civilization, M. de Laveleye sees formidable dangers to society. The owners of property are on the eve of becoming a powerless minority, and the many, to whom the whole power of the State is of necessity gravitating, see all the means of subsistence and enjoyment afforded by Nature in the possession of the few.

Readers who incline more to Sir H. Maine's point of view may therefore find much to concur with in some of M. de Laveleye's practical conclusions. The course of English legislation with respect to commons, for example, would, one may safely assert, have been materially different had M. de Laveleye's book been published two generations ago; and even now it may not be without influence on the side of those who resist further usurpation under the cloak of improvement; the pretext urged from the days of Henry III. when the statute of Merton was passed, to those of Victoria. The subject, again, has a practical importance in relation to two opposite types of society, represented on a great scale within the limits of the British empire; namely, ancient communities like those inhabiting India, and new communities at the beginning of their career, like those of Australia and New Zealand. As regards the first, it cannot be doubted that a knowledge of the early forms of land ownership would have preserved English administration from some of the worst blunders ever committed in the history of the government of dependencies. In the case of young colonies, on the other hand, it is no invasion of the principles on which individual property properly rests, to concede to writers like M. de Laveleye and Mr

Pearson[1], that a few score of the first comers into an immense territory ought not to be suffered to engross to themselves and their descendants the greater part of the land.

Great changes in English ideas with respect to the devolution and distribution of landed property will doubtless follow sooner or later a great change in the distribution of political power. The history of political ideas is the history of change; and the ideas of the dominant classes become the dominant ideas in politics. No right is now held more sacred in England than the right of unrestricted bequest; and the same sentiment supports the right of settlement and entail; both are regarded here as natural rights, although at the other side of the English Channel the prevailing opinion is that a child has an indefeasible right to a share of the property of his parents. Both conceptions are of historical origin; the first is the one that we find in the early code of the Twelve Tables, the second has come down from the code of Justinian. "In France," says Sir Henry Maine, "the change which took place at the first Revolution was this: the land law of the people superseded the land law of the nobles. In England the converse process has been gone through; the system of the nobles has become in all essential particulars the system of the people[2]." When the people shall have the dominion in England, what shall become of the system of the nobles?

There is no path of historical research that does not

[1] The reference is to Mr C. H. Pearson, the historian, who is now resident in Australia, and has written powerfully on the subject.

[2] *Early History of Institutions*, 2nd Ed., p. 124.

lead to some practical conclusions, but some of its paths end as it were in cross roads, going different ways, between which the choice may be difficult. It is however one great advantage of the historical method that it has attractions and instruction apart from the practical inferences of particular authors. The historical part of Auguste Comte's Positive Philosophy, for example, may be studied with profound admiration by readers who wholly repudiate his system of polity. In like manner M. de Laveleye's work on primitive property cannot be read without interest and benefit even by those who most firmly refuse to accept some of the doctrines that it upholds.

T. E. C. LESLIE.

November 30, 1877.

TRANSLATOR'S PREFACE.

The present work professes to be nothing but a mere translation of M. de Laveleye's treatise "*De la propriété et de ses formes primitives,*" and I have therefore confined myself strictly to a simple reproduction of the author's text, without comment or alteration. These pages will, however, be found to differ considerably from the original French edition of 1874, both in arrangement and contents; as by the courtesy of the author I am able to present the work to the English public in the form in which it is about to appear in the new French edition.

G. R. L. MARRIOTT.

Cambridge,
December, 1877.

PREFACE TO ORIGINAL EDITION.

THERE is a marked contrast between the positions of men's minds at the end of this century and at the end of the last. Then, men of all classes were eager for reform, and full of hope. Confident of the native goodness of the human race, they thought to secure its liberty and happiness, by correcting, or rather by annihilating, the institutions of the past, which had produced the slavery and distress of the people. "Man was born free," cried Rousseau, "yet everywhere he is in fetters." The eighteenth century and the French revolution replied: "We will break their fetters, and over the fragments shall reign universal liberty. The nations are brothers; tyrants alone arm them against each other. We will overthrow the oppressors, and the fraternity of nations shall be established." Intoxicated with these flattering illusions, men looked for a new era of justice and prosperity for an emancipated and restored human race. Now, also, we speak of reforms; but it is with a gloomy heart, for we have but a feeble trust in the final efficacy of our endeavours.

Caste and its privileges are abolished; the principle of the equality of all in the eye of the law is everywhere proclaimed; the suffrage is bestowed on all; and

still there is a cry for equality of conditions. We thought we had but the difficulties of the political order to solve, and now the social question rises with its gloomy abysses. Tyrants are banished; thrones are overturned, or the kings who sit on them are bound down by constitutions, which for the most part they respect; but instead of the quarrels of princes or dynastic rivalries, we now have a far more formidable source of war,—the enmity of races, which arms whole nations for the struggle. If no new breath of Christian charity and social justice come to calm all these hatreds, Europe, amid the struggles of class with class and race with race, is threatened with universal chaos.

Tocqueville has shewn, and every day there are fresh facts to confirm his predictions, that all nations are irresistibly impelled towards democracy, and yet democracy seems to produce nothing but strife, disorder, and anarchy. Democratic institutions thrust themselves upon us, and yet we cannot firmly establish them. Thus the same thing seems at once inevitable and unattainable. How to reconcile absolute liberty with the maintenance of established order in society, and how to enable the inequality of conditions, which is declared to be necessary, to exist side by side with the political equality which is conferred, is the formidable problem which modern societies must solve under pain of perishing like those of ancient times.

Democracy leads us to the verge of a precipice, is the cry of conservatives;—and they are right. Either you must establish a more equitable division of property and produce, or the fatal end of democracy will be despotism and decadence, after a series of social

struggles of which the horrors committed in Paris in 1871 may serve as a foretaste.

Under the influence of Christianity, all men are with blind improvidence proclaimed equal before the law, and the suffrage is actually granted to all, which enables the masses to name their legislators, and so to frame their laws. At the same time, economists reiterate that all property is the result of labour; and yet as before, under the empire of existing institutions, those who labour have no property and with difficulty gain the bare means of existence, while those who do not labour live in opulence and own the soil. As the former class compose the great majority, how can they be prevented from using some day the preponderance at their disposal in an endeavour to alter the laws which regulate the distribution of wealth so as to carry into practice the maxim of St Paul: "*qui non laborat, nec manducet*"?

The destiny of modern democracies is already written in the history of ancient democracies. It was the struggle between the rich and the poor which destroyed them, just as it will destroy modern societies, unless they guard against it. In Greece, equal rights were granted to all the citizens. But ancient legislators did not fail to recognize the fundamental truth, so constantly repeated by Aristotle, that liberty and democracy cannot exist without equality of conditions. To maintain this equality they had recourse to all kinds of expedients; inalienability of patrimonies, limitations on the right of succession, maintenance of collective ownership as applied to forests and pasturage, public banquets in which all took part,—the *sussitia* and

copis so often mentioned in ancient writers. But all these precautions were insufficient to check the progress of inequality; and then the social struggle began, pitting against each other the two classes almost as far separate in their interests as two rival nations, just as we see it in England and Germany at the present day. Note the ominous words of Plato (*Repub.* IV.): "Each of the Greek states is not really a single state, but comprises at least two; one composed of the rich, the other of the poor."

As the poor enjoyed political rights, they sought to turn them to account to establish equality: at one time they imposed all the taxes on the rich, at another they confiscated the goods of the latter, and condemned the owners to death or exile; often they abolished debts, and sometimes they went so far as to carry out an equal division of all property. The wealthy classes naturally took every means to defend themselves, even having recourse to arms. Hence there were constant social wars. Polybius sums up this lamentable history in a sentence: "In every civil war, the object was to displace fortunes." "The Greek cities," says M. Fustel de Coulanges in his excellent work, *La Cité Antique*, "were always fluctuating between two revolutions, the one to despoil the rich, the other to reinstate them in possession of their fortune. This lasted from the Peloponnesian war to the conquest of Greece by the Romans." Bœckh, in his work on the Political Economy of the Athenians, expresses himself in nearly the same terms[1].

[1] *Staatsh. der Athen.* I. p. 201. No writer has understood better than Aristotle the problem which the constitution of a democratic state involves.

Inequality, therefore, was the cause of the downfall of democracy in Greece.

Rome presents the same picture. From the beginning of the republic the two classes, the plebs and the aristocracy, were at issue. The plebs from time to time acquired political rights, but were gradually deprived of property; and thus, at the same time as equality of rights was established, the inequality of conditions became extreme. Licinius Stolo, the Gracchi, and other tribunes of the people endeavoured, by means of agrarian laws, to re-establish equality, and proposed the distribution of the *ager publicus*. To no purpose however; for on one hand extended the great domains,

His splendid work *The Politics* exhibits the question with a startling clearness. "Inequality," he says, "is the source of all revolutions, for no compensation can make amends for inequality." (Lib. v. c. 1.)

"Men, when equal in one respect, have wished to be equal in all. Equal in liberty, they have desired absolute equality. They imagine they are injured in the exercise of their rights, and rise in rebellion."

To prevent insurrections and revolutions it is therefore necessary, according to Aristotle, to maintain a certain equality. "Make even the poor owner of a small inheritance," he says. In the same chapter he commends the legislator Phaleas of Chalcedon for having taken measures to establish equality of fortune among the citizens. "The equalization of fortunes is the only method of preventing discord."

He reproaches the constitution of Sparta for "imperfect legislation on the distribution of property." "Some own immense lands, while others have hardly any property at all, so that almost the whole country is the patrimony of a few individuals. This disorder is the fault of their laws."

"A state, as nature intends it, should be composed of elements approaching as nearly as possible to equality." He goes on to shew that in a state composed of a rich class and a poor class, struggles are inevitable. "The conqueror regards government as the prize of victory," and turns it to account to oppress the vanquished.

The politicians of the eighteenth century, Montesquieu particularly, reiterate again and again the assertion that equality of property is the only basis of democracy. "It is not sufficient," says Montesquieu, "in a good democracy, that the portions of the soil should be equal; they must also be small, as at Rome." *Esprit des Lois*, v. 5.

and on the other slavery. A disinherited proletariate replaces the class of small citizen-proprietors, who were the very marrow of the republic. There was no longer a Roman nation: there remained but the rich and the poor attacking and execrating each other. Finally, out of the enmity of classes rose, as is always the case, despotism. Pliny presents the whole drama to us in one sentence, which explains all ancient history: *Latifundia perdidere Italiam.* At Rome, as in Greece, inequality, after stifling liberty, destroyed the State itself.

M. H. Passy published a work, *Des formes de gouvernement,* to shew that republics may be transformed into monarchies, but that a monarchy cannot develop into a durable republic, because class enmities prevent the regular establishment of democratic institutions. Events in Spain and France seem to bear him out.

At the present moment modern societies are met by the problem, which antiquity failed to solve; and we scarcely seem to comprehend its gravity, in spite of the sinister events occurring around us. The situation, however, is far more critical now-a-days than ever it was in Greece or Rome. There are two causes which aggravate it immensely;—one economic, the other moral. Formerly, as labour was executed by slaves, who, generally speaking, took no part in the social struggles[1], dissensions between the rich and the poor were no hindrance to the production of wealth. While the struggle went on in the Agora, slave labour was continued without check to support the two parties

[1] We must not however forget the slave insurrections, which on several occasions endangered the state. See Karl Bücher's excellent study, *Die Aufstände der unfreien Arbeiter*, 1874.

engaged in the strife. But, now-a-days, the labourers themselves come down into the arena, and the battle is fought out on the field of labour. Social struggles could not therefore be prolonged without entailing the impoverishment and disorganization of society.

Then, again, a higher ideal of justice aggravates the danger. The ancients, not admitting the natural equality of all men, did not recognize in them all the same rights. The slave who guided the plough and drove the shuttle, was in their eyes a beast of burden; he had therefore no claim, either to suffrage or property. The social difficulty was thus wonderfully simplified. But we have not the same resource. With us the equality of all men is an established dogma, and we grant the same rights to whites and negroes. Christianity is an equalizing religion. The Gospel is the good tidings brought to the poor, and Christ is not the friend of the rich. His doctrine verges on communism; and his immediate disciples and the religious orders who sought to follow his teaching strictly, lived in community. If Christianity were taught and understood conformably to the spirit of its founder, the existing social organization could not last a day.

Now the slave has become a citizen, and the labourer free. He is recognized as the equal of the wealthiest. He votes, he may enter Parliament. He claims, or will claim, property: and how shall we resist him, with a philosophy and a religion which justify his claim? The ancients, whose religion and philosophical notions absolutely condemned such pretensions, and even prevented their coming to life, did not succeed in establishing democratic institutions side by side with

inequality of conditions, although the problem had only to deal with free citizens, living by the labour of others. How should we succeed better, when we have to consider a whole nation without any exception?

In France, the question is already prominent. She has reached the point, common in history, where the higher classes, menaced by the demands of those beneath them, and terrified by the horrors of social strife, seek safety in a dictator. If, at this moment, 1877, the so-called conservative party opposes the establishment of the Republic, it is not from any exclusive attachment to monarchical forms; but simply because it is afraid triumphant democracy would soon lead to claims of an equalitarian nature. We should not regard the gloomy situation of France with disdainful pity; her lot will one day be ours, *Hodiè mihi, cras tibi,* as the funeral inscription runs. Everywhere socialism makes rapid progress. "As yet," as Mr Disraeli has said, "it is only a light breeze which hardly stirs the foliage, but soon it will be the unchained hurricane, overturning everything in its path." In Germany, socialism is an organized party, which has its journals, carries on a struggle in all the large towns, and sends to the Reichstag an increasing number of representatives. In Austria, Spain, and England, the masses of working men are penetrated with its ideas; and, what is more serious, even professors of political economy become *Katheder-Socialisten.* If the crisis seems more intense in France, it is not because the danger is greater. On the contrary, social order there rests on the solid rock of a soil divided among five millions of proprietors. But the communicative spirit, the natural eloquence

and quick logic of the French, reduce every problem to a more concise form, and so the struggle breaks out sooner. The vivid imagination of this brilliant people exaggerates dangers, and so urges the two parties to extreme measures. But, sooner or later, the economic situation being almost everywhere the same, class enmities will everywhere endanger liberty; and the more property is concentrated and the contrast accentuated between the rich and the poor, the more will society be threatened with profound revolutions. Either equality must be established, or free institutions will disappear. Tocqueville failed to see that here was the real rock ahead for democracy. But Macaulay demonstrated it with terrible eloquence, in his letter on American Institutions (*Times*, 6 April, 1860), in which he shews the future reserved for the United States.

In the author's opinion, modern democracies will only escape the destiny of ancient democracies by adopting laws such as shall secure the distribution of property among a large number of holders, and shall establish a very general equality of conditions. The lofty maxim of justice, *To every one according to his work*, must be realised, so that property may actually be the result of labour, and that the well-being of each may be proportional to the co-operation which he gives to production.

To attain this result, quiritary ownership, such as the Romans, men of conquest and masters of slaves, have bequeathed to us, is not sufficiently flexible, or human. Without returning to institutions of primitive times, I believe we might borrow from the Germanic and Slavonic system of possession, principles more consonant

than the Roman law with the requirements of democracies, because they recognize in every one the natural, individual right of property. Generally, in speaking of property, we assume that it can only exist in a single form, namely, that which is in force around us. This is a profound and mischievous mistake, which prevents our rising to a higher conception of law. The exclusive, personal, and hereditary *dominium*, as applied to land, is a fact of relatively recent origin; and for centuries men knew and practised nothing but collective ownership. As the organization of society has undergone such profound modifications in the course of centuries, we should not be forbidden to search for social arrangements more perfect than those with which we are acquainted. We are in fact compelled to do so, under pain of coming to a deadlock, in which civilization must perish.

As Fichte remarked in his treatise on morals (*System der Ethik*), and Don Francesco de Cardenas in his excellent History of Property in Spain (*Ensayo sobre la historia de la Propietad territorial en Espana*), analysis discovers two elements in the right of property, a social element and an individual element. It is not instituted solely in the interest of the individual and to guarantee him the enjoyment of the fruits of his toil; it is also instituted in the interests of society, to secure its stability and useful action. These two sides of property correspond to the double aspect under which we may consider man, whether as the isolated individual, pursuing his own object independently, or as a citizen and member of society, bound to his fellows by many relations and various obligations. In primi-

tive times the social element prevails in landed property. The soil is a collective domain belonging to the tribe; individuals have only a temporary enjoyment of it. In Greece, a large portion of the territory belonged to the State, and the rest remained subject to its supreme power. At Rome, quiritary *dominium*, that is to say, the absolute right exercised over the soil appears for the first time. In the Middle Ages under the feudal system, property is a remuneration for certain services rendered. The fief is the salary attached to certain duties. In theory it is not hereditary; but is conferred for life by the sovereign, and the holder is bound in return to carry arms, to maintain order, and assist in the administration of justice. The indivisible property of the *majorat* preserves a very distinct social character. The individual in possession has only a life-interest; he may not dispose of it because it is destined to maintain the family, which, with its traditions, its greatness, and its hereditary duties, is regarded as the constituent element of the nation. The hierarchical relations of classes, and therefore the whole organization of the State, are based on the possession of the soil. At the present day property has been deprived of all social character: contrary to what it was originally, it is no longer collective. It is a privilege subject to no fetters, no reservation, and no obligation, which seems to have no other end than the well-being of the individual. Such is the general conception and definition of it. With increased facility of alienation, it passes from hand to hand, like the fruits it bears or the beasts it nourishes. By advancing too far in this direction we have shaken the foundations of society;

and we may expect that in the future more scope will be allowed to the collective element. "We shall come," says Immanuel Fichte, "to a social organization of property. It will lose its exclusively private character to become a public institution. Hitherto the only duty of the State has been to guarantee to every one the quiet enjoyment of his property. Henceforth the duty of the State will be to put every one in possession of the property to which his wants and his capacities entitle him."

According to this eminent German writer, such a transformation will be effected by the influence of Christianity. "Christianity," he says, "yet carries in its breast a renovating power of which we have no conception. Hitherto it has only acted on individuals, and through them on the State indirectly. But whoever can appreciate its power, whether he be a mere believer or an independent thinker, will confess that it is destined some day to become the inner, organizing power of the State; and then it will reveal itself to the world in all the depth of its ideas, and the full richness of its blessing."

Christianity has, in fact, introduced an ideal of justice, which positive institutions, in spite of many improvements, completely fail to realize. This ideal was "the kingdom of God," which the early Christians thought to be at hand. Now we no longer expect the millennium, but should seek to establish principles of equality and evangelic justice on earth, in the midst of existing societies. But before better laws are established a higher sentiment of right and equity must pervade men's minds. We are beginning to see signs

from time to time, as well among the upper as the labouring classes, that the equalitarian ideas of the Gospel will one day leaven our laws and our institutions. This point is set forth with much clearness in François Huet's book, *Le Christianisme social,*—a work too little known.

There are certain countries in which the most radical democracy has been maintained for centuries, where feudalism and royalty have never penetrated, and where the most perfect liberty has reigned, without any danger of class struggles and social strife. These are the forest cantons of Switzerland, whose curious institutions have been so well described by Mr Freeman. There we may find the direct government dreamed of by Rousseau. The whole people come together to pass its laws, to nominate its magistrates, and to administer its affairs, just as was formerly the case in the Greek republics.

Here the object, which ancient lawgivers pursued in vain, has been attained. Equality of conditions has been preserved, as Aristotle desired; and thus political equality has not led to anarchy and subsequent despotism. The primitive form of property has been respected, which is alone conformable to natural justice, and which alone permits of the permanence of true democracy, without hurrying society into disorder.

In all primitive societies, whether in Europe, Asia and Africa, alike among Indians, Slavs and Germans, as even in modern Russia and Java, the soil was the joint property of the tribe, and was subject to periodical distribution among all the families, so that all

might live by their labour, as nature has ordained. The comfort of each was proportional to his energy and intelligence: no one, at any rate, was entirely destitute of the means of subsistence; and inequality increasing from generation to generation was provided against. In most countries this primitive form of property has given place to quiritary property, and the inequality of conditions has led to the domination of the higher classes, and the more or less complete servitude of the labourer. In Switzerland, however, side by side with individual properties, there is in each commune a large portion of the territory still preserved as collective domain: this is the *allmend*. Its name indicates its nature as being "the property of all."

The old German law had an admirable word to designate the inhabitants of a village: it styled them *geerften*, "inheritors." All the children of the large communal family were entitled to a share in the inheritance. None was ever without a portion from which his labour might win sufficient for his support.

The Slav and Germanic custom, securing to every one the enjoyment of land from which to derive his means of subsistence, is the only one conformable to the rational theory of property. The generally accepted theory of property requires total reconstruction, for it rests on premises in direct antagonism with historic facts and with the very conclusions at which it seeks to arrive.

In enquiries as to the origin of property, sufficient attention has not been given to ancient historic facts, which may be called natural as everywhere springing from an instinct of justice, which seems innate in hu-

man nature. As Sir Henry Maine remarks, "theories, plausible and comprehensive, but absolutely unverified, such as the Law of Nature or the Social Compact, enjoy a universal preference over sober research into the primitive history of society and law; and they obscure the truth not only by diverting attention from the only quarter in which it can be found, but by that most real and most important influence which, when once entertained and believed in, they are enabled to exercise on the later stages of jurisprudence[1]."

Thus, in order to defend the quiritary property bequeathed to us by the Romans, writers have asserted that it has existed at all times and in all places, *ubique et semper*;—whereas a closer knowledge of history shews us that the original and universal form of property was the mode of possession practised by the Slavonic and Germanic tribes, and exercised at Rome itself over the *ager publicus*.

The jurists, under the influence of the *Digest* and the *Institutes*, base the right of property on the occupation of a *res nullius*; but we know of no period in which the soil has been a *res nullius*. Among hunting tribes their hunting-ground, among pastoral tribes their pasture lands, and finally among the earliest agricultural tribes the cultivated land, were always regarded as the joint property of the tribe, and no one ever conceived the idea that an individual could have any exclusive, hereditary right therein. Occupation could only create a right of property over movable objects, which were actually subject to seizure and detention. The formalities of sale among the Romans,

[1] Maine, *Ancient Law*, p. 3.

shew that it was only applied by a comparatively recent extension to the alienation of an immovable.

In deriving the right of property solely from labour, economists are in direct opposition to the jurists and the legislations of all countries, and even to the existing organization of society, which their theories, if once admitted, would completely overthrow.

Writers, who endeavour to prove the necessity of the right of property, make use of arguments which shew that, in order to be equitable, it must be organized in the same way as among primitive nations, that is, so as to guarantee to every one a natural, inalienable right. The eminent legislator, Portalis, adducing the arguments in support of the title in the *Code civil* which treats of property, shews it to be necessary and legitimate by the following reasoning:—Man can only live by his labour; in order to labour he must be able to appropriate a portion of the soil to dispose of it as he pleases; hence the right of property is necessary. Nothing can be more true; but, if property is necessary for a man to labour and live, it follows that every one should have some property. Bastiat adopts the same premises as Portalis, with no clearer perception of their consequences. "In the full force of the word," he says, "man is born a proprietor, because he is born with wants the satisfaction of which is essential to life, and with organs and faculties, the exercise of which is essential to the satisfaction of his wants." From these words of Bastiat it follows that, unless we condemn certain persons to death, we must recognize in all the right to property. If man is born a proprietor, it is

incumbent on the law to put him in a position to exercise the right recognized in him.

"Man," says Bastiat again, "lives and develops by appropriating certain objects. Appropriation is a natural, providential phenomenon, essential to life, and property is only appropriation converted into a right by labour." If appropriation is essential to life, all should be able to appropriate a portion of matter by their labour. This natural right is recognized in the *allmend* system, and in the ancient Germanic law, but is entirely overlooked in all legislation derived from the Roman law. "Property is not a natural, innate right," says Dalloz, a well-known jurist, "but it springs from an innate right, which right is liberty." If property is indispensable to liberty, does it not follow that all men having the right to be free, all are equally entitled to be proprietors? In fact, without property they would be dependent on those from whom they received their wage. Troplong, the great jurist of the Second Empire, in a pamphlet, *La propriété d'après le Code civil*, published in 1848, in refutation of the false doctrines of the Socialists, expresses himself in these terms (p. 12): "If liberty is the basis of property, equality makes it sacred. All men being equal, and therefore equally free, every one ought to recognize in another the sovereign independence of the right." Now either this high-sounding phrase has no meaning at all, or else it signifies that we ought to secure to every one the enjoyment of property, which may guarantee his independence.

Most modern authors declare property to be a natural right. But what is a natural right, unless it be a

right so inherent in human nature that no man should be able to be robbed of it, unless he has forfeited it by his conduct?

In this volume I have simply endeavoured to draw a historical sketch of primitive forms of property, without deducing any new theory as to the right. I do not believe that history can disclose the right to us. Because an institution has existed, even through all time, it does not follow that it is just, or that it should be preserved or reconstructed. We may, however, conclude from the fact of its long duration, that it has answered to men's sentiments and men's requirements during the centuries for which it has been maintained. But, if all the arguments adduced by jurists and economists in favour of quiritary property, rather condemn it and justify primitive property, as conceived and practised by ancient societies, under the sway of a universal sentiment of natural justice, there is occasion, one would think, for reflection on this striking agreement; and all the more so as property thus regarded as a natural right belonging to all, is alone conformable to the sentiments of equality and charity which Christianity begets in the soul, and to the reforms in civil laws which the development of the industrial organization seems to command.

The knowledge of primitive forms of property may be of direct interest to new colonies, which have immense territories at their disposal, such as Australia and the United States, for it might be introduced there in preference to quiritary property.

Our older societies can only arrive at an order more in harmony with justice and Christianity, after a series

of social struggles, in which liberty may succumb: but the younger societies, still in process of formation in another hemisphere, may escape these fearful trials, if they seek inspiration in the lessons of history and adopt institutions which in certain countries have allowed democracy to survive without compromising order and liberty. In every commune a portion of territory should be reserved and divided in temporary enjoyment among all the families, as is done in the forest cantons of Switzerland.

I trust the citizens of America and Australia will not adopt the strict and severe right of property which we have borrowed from Rome, and which is leading us to social strife. They should rather return to the traditions of their ancestors. If Western societies had preserved equality by consecrating the natural right of property, their normal development would have been similar to that of Switzerland. They would have escaped the feudal aristocracy, the absolute monarchy, and the demagogic democracy with which we are threatened. The communes, inhabited by free men, property-holders and equals, would have been allied by a federal bond to form the State, and the States in their turn would have been able to form a federal union such as the United States. We should not forget this important lesson taught us by the history of political and social institutions: Democracies, which fail to preserve equality of conditions, and in which two hostile classes, the rich and the poor, find themselves face to face, are doomed to anarchy and subsequent despotism. The recent strikes in the United States shew that the danger there is already near the surface. Such is

the lesson which Greece teaches us by the mouth of Aristotle, and of which history and our actual situation alike give us proof. To preserve liberty in a democratic state, its institutions must maintain equality.

States, in which democracy and inequality are developed side by side, are therefore especially threatened; and it has to be seen whether they contain the wisdom, the energy, and the skill, necessary to change their institutions. Younger societies, however, which are springing up on a virgin soil, may escape the danger, by adopting laws and customs, which, from time immemorial, have secured liberty and property to the small Swiss cantons, under the most radically democratic government that we can conceive.

Need I add, that the object of this book is not to advocate a return to the primitive agrarian community; but to establish historically the natural right of property as proclaimed by philosophers, as well as to shew that ownership has assumed very various forms, and is consequently susceptible of progressive reform. Mr Mill regarded this point as of the greatest importance, and counselled the author, in a letter reproduced at the end of the volume, to develope it at full length. The present work was compiled in accordance with this advice.

December, 1877.

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PRIMITIVE PROPERTY.

CHAPTER I.

THE GRADUAL AND UNIVERSALLY SIMILAR EVOLUTION OF PROPERTY IN LAND.

UNTIL quite recently dolmens and druidic stones were regarded as peculiar to Celtic tribes. But the discovery of these monuments of the most remote ages in Holland, and in Germany, in Asia, America, and even in the Asiatic Archipelagoes, together with flint weapons and implements characteristic of the Stone age, has established the opinion that the human race has everywhere passed through a state of civilization, or rather perhaps of barbarism, an image of which is presented to us, even now, in the life of the natives of New Zealand and Australia. In a work of the greatest interest M. L. Königswarter has shewn that certain customs which were thought to be peculiar to the Germans, such as the composition for crimes, ordeals and trial by battle, were really to be met with among all nations, at the same stage of civilization[1].

Village communities, such as exist in Russia, were again thought to be exclusively characteristic of the Slavs, who were said to have communistic instincts. Slavophils boast of these

[1] See *Études historiques sur le développement de la Société humaine*:—"We have often been struck by the fact, that a particular custom or institution is constantly being represented as peculiar to a particular race or people, whereas the custom or institution is to be found among many other nations and forms one of the general customs, or necessary phases, under which the human race carries out its work of development and civilization."

institutions as peculiar to their race, and assert that they must secure its supremacy, by preserving it from the social struggles, which are destined to prove fatal to all Western States. Now, however, it can be proved,—and we shall here endeavour to prove,—that these communities have existed among nations most distinct from one another,—in Germany and ancient Italy, in Peru and China, in Mexico and India, among the Scandinavians and the Arabs—with precisely similar characteristics. When this institution is found among all nations, in all climates, we can see in it a necessary phase of social development and a kind of universal law presiding over the evolution of forms of landed property[1]. Primitive nations everywhere used the same clumsy implements formed of flint, and regulated the ownership of the soil in the same fashion, under the existence of similar conditions.

Sir Henry Maine, who has held high judicial office in India, was struck by finding at the feet of the Himalayas or on the banks of the Ganges, institutions similar to those of ancient Germany, and he has published these curious coincidences in a book entitled *Village Communities in the East and West.* He there brings into strong light the importance of the facts described. It seems, as he says very truly, that from all sides new light is being shed to illustrate the most obscure pages of the history of law and of society. Those who were of opinion that individual ownership was evolved, by gradual transformations, from primitive community, found evidence of the fact in the ancient villages of German and Scandinavian nations. They were more struck when England, always supposed to have been from the days of the Conquest subject to the feudal

[1] Two publications have recently directed attention to this hitherto little known subject, in which many enquiries still remain to be pursued notwithstanding the admirable works of von Maurer. The one, *Ueber die mittelalterliche Feldgemeinschaft in England*, is due to Professor Nasse of the University of Bonn, who has lately established the fact, which very few Englishmen suspected, that village communities were originally the general system of property in England, and that numerous traces of this order of things survived till after the middle ages.

The author of the second publication, *Village Communities*, Sir Henry Maine, so well known for his work on *Ancient Law*, a masterly treatise on the philosophical history of law and its connection with early civilization, says (*Lectures on the Early History of Institutions*, p. 1), "The collective ownership of the soil by groups of men ...... is now entitled to take rank as an ascertained primitive phenomenon;" and he bears witness to the great value of the materials collected by the author in support of this position.

régime, was recently shewn to contain as many traces of collective ownership and common cultivation as the northern countries. They were further confirmed in their convictions, on learning that these primitive forms of ownership and cultivation of the soil are to be found in India, and direct the progress of the administration of that vast colony. Hence these juridical antiquities, which seemed as if they could only be of interest to a limited number of *savants*, are of real, practical interest. Not only do they throw new light on fundamental institutions and on the mode of life of primitive races; but, as Mill remarked, they raise us above the narrow ideas, which make us regard that which is carried on around us, as the only scheme of social existence.

The history of property has still to be written. Roman law and modern law grew up in a period, when every recollection had perished of the collective forms of landed property—forms which, for so long, were the only ones adopted. Hence we have great difficulty in conceiving of property otherwise than as it is constituted in the Institutes or in the Civil Code. When jurists want to account for the origin of such a right, they fly to what they call the State of Nature, and from it derive directly absolute, individual ownership—or quiritary *dominium*. They thus ignore the law of gradual development, which is found throughout history, and contradict facts now well known and well established.

It is only after a series of progressive evolutions and at a comparatively recent period that individual ownership, as applied to land, is constituted[1].

So long as primitive man lived by the chase, by fishing or gathering wild fruits, he never thought of appropriating the soil; and considered nothing as his own but what he had taken or contrived with his own hands. Under the pastoral system, the notion of property in the soil begins to spring up. It is however always limited to the portion of land, which the herds of each tribe are accustomed to graze on, and frequent quarrels break out with regard to the limits of these pastures. The

[1] The evolution of property has been well described in its general features by Dr Valentin Mayer, *Das Eigenthum nach den verschiedenen Weltanschauungen*, Freiburg i. B., 1871.

idea that a single individual could claim a part of the soil as exclusively his own never yet occurs to any one; the conditions of the pastoral life are in direct opposition to it.

Gradually, a portion of the soil was put temporarily under cultivation, and the agricultural system was established; but the territory, which the clan or tribe occupies, remains its undivided property. The arable, the pasturage and the forest are farmed in common. Subsequently, the cultivated land is divided into parcels which are distributed by lot among the several families, a mere temporary right of occupation being thus allowed to the individual. The soil still remains the collective property of the clan, to whom it returns from time to time, that a new partition may be effected. This is the system still in force in the Russian commune; and was, in the time of Tacitus, that of the German tribe.

By a new step of individualization, the parcels remain in the hands of groups of patriarchal families dwelling in the same house and working together for the benefit of the association, as in Italy or France in the middle ages, and in Servia at the present time.

Finally individual hereditary property appears. It is, however, still tied down by the thousand fetters of seignorial rights, *fideicommissa, retraits-lignagers*, hereditary leases, *Flurzwang* or compulsory system of rotation, etc. It is not till after a last evolution, sometimes very long in taking effect, that it is definitely constituted and becomes the absolute, sovereign, personal right, which is defined by the Civil Code, and which alone is familiar to us in the present day.

The method of cultivation is modified in proportion as property is evolved from community. From being extensive, cultivation becomes intensive, that is to say capital contributes to the production of what was formerly derived from the extent of the territory.

At first, the cultivation is temporary and intermittent. The natural vegetation is burned on the surface, and grain is sown in the ashes; after this the soil rests for eighteen or twenty years. In this way, the Tartars cultivate buckwheat, and the inhabitants of the Ardennes rye, on the high-lying heaths, to which they apply the system of "essartage."

This mode of cultivation is not incompatible with the pastoral system and a nomadic life. Later on, a small portion of the land is successively put into cultivation, according to the triennial rotation, the greater part remaining common pasturage for the herds of the village. This is the system of Russia and Ancient Germany. Afterwards the cattle are better tended, the manure is collected, and the fields are enclosed. Roads and ditches are marked out, and the land is permanently improved by labour.

Then the fallow is curtailed, powerful manures are purchased in the towns or devised by industry; capital is sunk in the soil and increases its productiveness. This is the modern agriculture, the system of Italy and Flanders since the middle ages; never coming into action until the individual ownership of the land is completely established. This concurrent progress of property and of agriculture is the important fact which the most recent researches place in strong relief. Nevertheless, the facts established as regards Peru formerly, or in the *Allmends* of Switzerland or Germany at the present time, shew that the collective ownership of the soil is not antagonistic to intensive cultivation, so long as the right of individual occupation is secured for a sufficiently long term.

The marvellous discoveries recently made in Comparative Philology and Mythology are due to the employment of the historic method. Sir Henry Maine believes that the same method, if applied to the origin of Law, would throw entirely new light on the primitive phases of the development of civilization. We should see clearly that laws are not the arbitrary product of human wishes, but the result of certain economic necessities on the one hand, and of certain ideas of justice on the other, derived from the moral and religious sentiment. These necessities, these ideas, these sentiments, have been very similar and have acted in the same manner in all societies, at a certain period in their development, directing the establishment of institutions everywhere the same. All races have not, however, advanced at the same pace. While some had already passed out of the primitive community at the commencement of their historical existence, others still continue to practise, in

our day, a system which dates from the very beginning of civilization.

From the earliest times in their history, the Greeks and Romans recognized private property as applied to the soil, and the traces of the ancient tribe community were already so indistinct as not to be discoverable without a careful study. The Slavs, on the other hand, have not yet abandoned the collective system. Geology shews us that certain continents preserve a Flora and Fauna, which have elsewhere been extinct for ages. Thus in Australia plants and animals are found, belonging to an earlier period of the geological development of our planet. It is in cases such as these that the comparative method can render great service. If certain institutions of primitive times have been perpetuated till our own time among any nations, we must turn here to the living forms, that we may better comprehend a state of civilization, which elsewhere is lost in the night of time.

We shall first endeavour to describe the system of village communities, as still existing in Russia and Java. We will then shew that this was the system in force in ancient Germany and among most of the nations known to us. Lastly we will examine the family communities, which were so widely spread in Europe in the middle ages, and a type of which can still be seen among the Southern Slavs of Austria and Turkey.

CHAPTER II.

VILLAGE COMMUNITIES IN RUSSIA.

In order to form a clear idea of the collective ownership of the soil, which is vested in the Russian village even at the present day, we must picture to ourselves the social organization of the tribe among the Nomads, from whence the Russian system is obviously derived.

The following is the description given of this organization by an accurate and thoughtful economist, M. Le Play, who has made a careful study of the system of property among various pastoral nations, and especially among the tribes on the Asiatic side of the Urals. Among these Nomads, the members of the same group or community join together their agricultural implements, and collectively cultivate their land, and manage the capital—that is the cattle—destined to make it productive. There the system of common property is a direct consequence of the pastoral life and the family organization.

"A group of tents is always the characteristic of a society of shepherds, whether the flocks belong to a great proprietor, or are joint property. Every individual forming part of this group has always an interest in the profits of husbandry: he is entitled, in all cases, to a share of the produce, the maximum of which is fixed by the nature of his wants.

"Among the Nomads, the direct descendants of one father generally remain grouped together: they live under the absolute authority of the head of the family, in a system of community. We may say that nothing is the subject of separate ownership except their clothing and weapons. When the increase of a family no longer admits of all its members remaining united, the head of the family directs an amicable separation; and determines the portion of the common possessions that should be given to the branch which is separating

from the stem. On the other hand, the community often holds together after the death of the head of the family. In this case, the collateral relations, even though connected only in distant degrees of relationship, remain united under the direction of the member who can exercise *the patriarchal authority with most influence.*

"The principle of community is equally adapted to the organization of tribes with settled abode......Among the semi-nomadic tribes subject to Russia...the arable land, although generally cultivated by each family on an independent title, is mainly owned in a species of indivisibility.

"Among the Bachkirs, nothing of the nature of individual property is seen, except as applied to the dwelling-houses and their immediate dependences[1]."

The agrarian organization of the Russian village is exactly similar to that of the Tartar tribe, except that the land is improved by agriculture instead of being merely worked under the pastoral system.

In all Russia, that is to say in the immense territory which extends to beyond the Dnieper and contains a population of from thirty to thirty-five millions; the land, which does not belong to the Crown or to the lords, is the collective, undivided property of the commune. The law of February 19, 1861, defines collective property in the following terms. "Enjoyment in common (*obshtshinnve polzovanie*) is the mode of enjoyment regulated by custom, by virtue of which the soil is divided or allotted from time to time among the peasants, either by head, by *tiaglo*, or otherwise, joint responsibility being imposed upon all for the fulfilment of the obligations attached to the occupancy."

The commune is the constitutional atom of the Russian nation. It forms a civil person, a juridical corporation, endowed with a vitality very powerful and active, even very despotic. It alone is proprietor of the soil, of which individual members have but the usufruct or temporary enjoyment. It is jointly responsible to the lord for his rent, and to the state for taxes and recruits, in proportion to its population. It governs itself far more independently than the commune of France or Germany. For all purposes of administration it enjoys as complete a self-government as the American township. The ukase of

[1] Le Play, *Les Ouvriers Européens.*

February 19, 1861, has conferred on it a real, and it is said even an excessive, autonomy.

The heads of families, assembled in council under the presidency of the *starosta* or mayor, whom they have elected, discuss and regulate all the affairs of the commune, just as the vestrymen do in England, or the *landesgemeinde* in the primitive cantons of Switzerland. The *starosta* is the chief of police; he also has jurisdiction over lesser offences. He can pronounce sentence to the amount of one rouble fine and two days' hard labour.

The union of several villages forms the *volost*, a sort of large commune or district, resembling the *township* of the United States, or the *concelho* of Portugal. The *volost* has from three hundred to two thousand inhabitants. The administrative chief of the *volost* is the *starshina*, who is assisted by a council, composed of the *starostas* of the villages in his district. In concert with them, he regulates all that relates to taxes, recruits, roads or the *corvée*. For important affairs, he summons the great council of delegates from the villages, each of whom is named by a group of ten families. This council elects from four to ten judges or jurymen, who meet in succession, three at a time, to hear civil cases up to the amount of one hundred roubles, and to punish misdemeanours.

The aggregation of inhabitants of a village possessing in common the land attached to it, is called the *mir*[1]. This word,

[1] Precise details concerning the Russian commune, especially of a juridical nature, are difficult to collect. The best sources accessible for those who do not understand Russ, are the large work of the Baron de Haxthausen, *Études sur la Russie*, and his more recent work, *Die ländliche Verfassung Russlands*, Leipzig, 1866;—a curious treatise of M. Wolowski in the *Revue des Deux Mondes* of August 1, 1858, and a study by M. Cailliatte in the number for April 15, 1871;—*Free Russia*, by Mr Hepworth Dixon;—the complete report of Mr Michell on the emancipation of the serfs, in a Blue Book of 1870 (*Reports concerning the Tenure of Land in the several Countries of Europe*); *l'Avenir de la Russie*, by Schedo-Terroti;—a study by M. Tchitcherine in the *Staatswörterbuch* of Bluntschli (*Leibeigenschaft in Russland*);—Kawelin, *Einiges über die russiche Dorfgemeinde*, *Tüb. Zeitschrift für Staatswiss.* xx. 1,—and the appendix by Prof. Helferich on the same subject;—Von Bistram, *Rechtliche Natur der Stadt- und Landgemeinde*;—Adolph Wagner, *Die Abschaffung des privaten Eigenthums*; Julius Eckardt, *Baltische und russische Culturstudien* (1869) and his *Russlands ländliche Zustände* (1870);—a paper of M. Julius Faucher, member of the German parliament, in the *Cobden Club Essays*;—an article of M. Wyrouboff in *La Philosophie positive*;—J. Ewers, *Das älteste Recht der Russen in seiner geschichtlichen Entwickelung*;—Von Reutz, *Versuch über die geschichtliche Ausbildung der russischen Staats- und Rechtsverfassung*;—the results of the great agricultural enquiry of 1873, in five volumes (Russ);—and finally the excellent

which appears to belong to all Slavonic dialects, and is found in Tzectic and Silesian documents of the thirteenth century, answers to the idea rendered in the names *commune*, *gemeinde*, *communitas;* but, in its primitive sense, it denotes something venerable and holy, for it also signifies the universe, like the Greek word *κόσμος*. The Baron de Haxthausen quotes a great number of Russian proverbs, shewing the profound respect which the *mir* inspired in the people: "God alone is judge of the *mir;*—All that the *mir* has decided, ought to be done;—A breath of the *mir* shivers the rock;—The *mir* is the bulwark of the country." It is, in fact, the primordial institution of the nation, "The original phenomenon" of the genius of the Slav nations, as the "old Russians" say.

Each male inhabitant of full age is entitled to an equal share of the land of which the *mir* is proprietor. In primitive times, there was no partition of the soil. The land was cultivated in common, and the produce divided among all, in proportion to the number of labourers in each family. At the present time, in the midst of the forest districts, among the Roskolniks, some communes, bearing the name of *skit*, are found, where this system is still in force. It is also said to be met with in certain isolated districts of Bosnia; but the fact is disputed. At a later period, a partition of the soil was effected every year, or every three years, after each triennial rotation; and in some parts this ancient custom is still maintained. The period of partition varies at the present day in the different districts. In certain localities partition takes place every six years; in others, every twelve or fifteen years: every nine years is the most usual period. At every public census, a new division is regarded as obligatory. These general re-divisions have not been made at regular intervals. Since 1719, there have been ten of them, the last of which occurred in 1857.

The peasants, though faithful to the principle of community, do not readily assent to this operation of partition, because the parcels which they have occupied return to the common mass,

work of J. von Reussler, *Zur Geschichte und Kritik der bäuerlichen Gemeindebesitzes*—J. Deubner, Riga, 1876. This work comprises an analysis and criticism of all the writings which have appeared on the question, whether in the form of books, newspapers, articles, reviews or official reports.

and the new allotment frequently assigns others to them. According to the report of M. de Haxthausen, they call the general re-division "the black partition," *tschernoi peredell.* In many communes, the hay meadows are divided afresh every year.

Everything that concerns the period and manner of partition, the regulation of the number of couples who are entitled to a share, the disposition of lots falling vacant, and the granting of land to new households, is decided by the peasants themselves, assembled under the presidency of the *starosta.* At this assembly, at least half their number must be present. Two-thirds of their votes are necessary to pronounce the dissolution of the community, and to divide the soil into permanent, individual property; to effect a new partition and to expel or hand over to the government "vicious and incorrigible" persons.

The dwelling-house, *izba,* with the land on which it stands, and the garden attached to it, form a private, hereditary property. The owner, however, may not sell it to a person who is a stranger to the *mir,* without the consent of the inhabitants of the village, who have always a right of pre-emption. When a family dies out this private property returns to the common stock: and a family, on leaving the village, has for six months a right of removing the house, or rather the materials, which being only wood are easily carried away.

In the village communities of all countries, especially in the German mark, a similar custom exists. It admits of easy explanation. The commune is not merely an administrative unit: it is rather a patriarchal association, an extension of the family, in which the ties are so close, and the joint responsibility so strict, that a stranger cannot be admitted without the consent of the majority. Even at the present day in Switzerland, the freedom of a commune is not obtained by mere residence; it can only be acquired by purchase or grant with the consent of the body of freemen. In the middle ages it was the same everywhere. In the Russian commune there is, then, no landed property completely absolute: that which exists is still subject to the trammels of the eminent domain residing in the community.

The Russian village is composed of a number of houses con-

structed of beams laid one on another, like the American log-house or Swiss *châlet*. The gable facing the street is ornamented with a balcony; and the roof, which projects, is decorated with ornaments in carved wood. The dwellings never stand alone in the middle of the fields belonging to them, as in Flanders, England, Holland, and in all the countries where the soil has for centuries been divided into hereditary patrimonies. The name of the Russian village, *derevnia*, has the same root as the German *dorf*, the Scandinavian *trup*, the Anglo-Saxon *thorp*, and the French *troupe, troupeau*. It signifies, as M. Julius Faucher remarks, union, aggregation, with a view to mutual protection[1]. Men, in primitive ages, have to group together for common resistance against the attacks of enemies and beasts of prey, as well as to cultivate the soil by the association of hands and the cooperation of individual forces.

To effect the partition, surveyors, appointed by the commune, proceed to the measurement and estimation of the various parcels of land, and to the formation of lots. According to the account of M. de Haxthausen, in certain localities they make use of consecrated rods or wands, of unequal length ; the shorter ones being reserved for the lands of better quality, so that the lot may be smaller in proportion to its fertility.

All the arable land of the commune is divided into three concentric zones, which extend round the village ; and these three zones are again divided into three fields according to the triennial arrangement of crops. More regard is paid to proximity than to fertility, as this varies very little in the same district in Russia. The zones nearest the village are alone manured, every three, six, or nine years, in the sandy region; while in the region of the black soil the use of manure is unknown. Each zone is divided into narrow strips, from 5 to 10 mètres broad, and from 200 to 800 mètres long. Several parcels are combined, care being taken that there should be at least one in each zone and in each division of the rotation. Portions are thus formed, which are distributed by lot among the co-partners.

[1] See *The Russian Agrarian Legislation of* 1861, by Julius Faucher of the Prussian Landtag, in the *Systems of Land Tenure in various Countries*, published by the Cobden Club.

All the inhabitants, including women and children, assist at the drawing of lots, on which depends the determination of the parcel of ground, which each has to cultivate until the next period of partition. The drawing gives rise to but few complaints, because the shares, being composed of several small parcels, the values of which compensate one another, are for the most part equal. If any one can shew he is injured, he receives an additional portion, taken from the land remaining unappropriated.

Formerly the peasants held the forest and pasture in common, certain services being reserved for the lord. The meadows were divided into lots every year and each family mowed its own parcel, or else the whole was mown in common and the hay divided. The act of emancipation of 1861 assigned exclusive ownership of the meadow and forest to the lord, contrary to the ancient law, as originally they belonged to the *mir*. It is an injustice, and an error in an economic point of view. If the ancient communities are preserved, everything essential to their commodious existence should be granted them. They should seek their model in Switzerland, in the villages where the system of *Allmends* procures for the usufructuaries "pasturage, forest, and field,"—*Weide, Wald und Feld.* The forest being assigned to the lord, the peasants are made dependent on him, and the results of emancipation are, in a measure, nullified. The system of collective property can only bear its full fruit, when it is applied in its integrity and the cultivators are free citizens completely independent.

On the lands of the Crown, where there is no want of space, the *mir* generally holds in reserve a portion of the land, that it may always have some for the new households that are formed; meanwhile these unallotted parcels are let for rent. By this means the necessity of a new partition is rendered less frequent.

On the Crown domains, the division is carried out according to the number of souls. A certain number of *dessiatines*[1] is fixed on for each member, *doucha,* and every father of a family obtains as many of these parts as he has individuals subject to him.

On the lands recently dependent on the lords, the division

[1] The *dessiatine* is about 2·7 acres.

is effected by *tiaglos*. The meaning attached to this word *tiaglo*, which represents the unit of labour, varies: Formerly it denoted a group of two or three labourers in each family; at the present time, the word is used to denote each married couple, so that if several couples live in the same house and labour in common, each of them is entitled to a share. Under the system of serfage the unit for the *corvée* to be performed or for the payments to be made to the lord was the *tiaglo*. This word, coming from the Russian verb *tianut*, to draw, is from the same root as the German *ziehen*, and signifies "a person who draws," that is, who drives the plough or cultivates. It was to the lord's advantage to multiply the *tiaglos*, as each of them owed him a certain number of days' labour per week. The patriarchal families, which united several couples under the same roof, represented several *tiaglos*, according to the number of working hands at their disposal. The *corvée* due to the lord being assessed according to *tiaglos*, it was natural that the land should be divided in the same proportion. Under the first system, the allotment was by the number of heads; under the second, by the number of married couples or of adult labourers.

As the various parcels assigned to each household were intermixed, it followed that all had to be cultivated at the same time and devoted to the same crop. This is what the Germans call *Flurzwang*, or "compulsory cultivation." One-third part of the arable land is sown with winter grain, wheat or rye; one-third with oats; and the remaining third lies fallow. Each family tills the ground, sows and reaps separately and on its own account; but there is nothing to mark the boundary of the parcels. The whole section occupied by one of the divisions of the triennial rotation seems only to form a single field. The several agricultural operations must be performed at the same time by all; because, there being no roads or ways of approach, no one can get to his parcel of ground without passing over those of his neighbours. The assembly of inhabitants of the commune determines the time of sowing and harvest, just as we see them do in the south, in Switzerland, in Italy, and in France itself, for the time of vintage. It is another of the cases in which individual initiative is fettered by the authority of the *mir*.

Before the abolition of serfage, the lord granted to the

peasants about half the arable land, and kept the remaining half for himself, which he had cultivated by means of the labour supplied by the *corvée*. The serf had to work three days in the week for his master. The forest and waste lands supplied the cultivators with wood and pasturage, for which certain supplementary services were reserved.

In 1861, in Russia proper, 103,158 proprietors owned 105,200,108 *dessiatines*, with twenty-two millions of serfs, who had a usufruct of one-third of the whole surface, or of some 35,000,000 *dessiatines;* which allowed rather more than two-and-a-half *dessiatines* a head, or about seven *dessiatines* for each family.

In the region of the "black" soil, the population was denser, and the share of each was consequently less. This share was called the *nadiell.* The *nadiell* served as the basis of partition between the peasants and the lords, decreed by the act of emancipation. The lord was bound to leave as the property of the enfranchised serfs a portion of the soil, reserving a money rent always redeemable[1]. The amount varied with local circumstances; but in every village a minimum is fixed for each male inhabitant. This minimum varies. In the steppe regions, it is from three to eight *dessiatines;* in the industrial districts, it is smaller; thus, in the province of Moscow, it is as low as one *dessiatine.* In the region of the "black" soil, it averages from two to three *dessiatines.* Practically, the portion of land, which the enfranchised serfs have obtained, corresponds very closely with the *nadiell,* or the share which they previously had to cultivate.

This is the position of an ordinary peasant family in the province of Novgorod. It cultivates about 20 hectares, or 49 English acres, of which half is arable, the rest hay or pasture land. The triennial rotation of crops is generally practised in Russia, so that one-third of the arable is sown with rye, the second with oats, and the remaining one is fallow. The stock consists of two horses, three cows, and four or five sheep. It pays to the lord seventy francs for the rent, or about a franc

[1] The government makes advances to the peasants to enable them to redeem the rent. The former serfs occupy on the average about an acre, paying a rent of from twenty to twenty-four francs.

and a half per acre; to the state, a tax of twelve francs for each male, or about thirty francs in all on the average; and to the priest another six or seven francs[1].

So far from the emancipation laws proving the death-blow of the collective existence of the *mir*, the new communal organization established by the ukase of February 19, 1861, has rather strengthened it. For it has confirmed the principle, which made each commune a corporation, jointly responsible for the exact payment of all taxes due to the state, to the province or to the commune from its inhabitants individually. The heads of families, united in general assembly, may introduce individual property and put an end to the system of community; but to determine this transformation, a majority of two-thirds is necessary.

It is asserted that, if the decision could be taken by a mere majority, the communities would have soon ceased to exist. Observed facts do not seem to confirm these predictions. The peasants do not so readily abandon ancient customs; and it is only by gradual and insensible changes, that old institutions are modified under the influence of new ideas and new requirements.

Here is a curious example, which shews how strongly the Russian peasants are attached to the agrarian organization of the *mir*. Some years ago, on a property in the district of Peterhof, the proprietor wanted, in the interests of the serfs, to introduce the agrarian system of western countries. He divided the land into independent holdings, on which he built at his own expense separate houses for each family. Scarcely was the abolition of serfage decreed, when the peasants hastened to re-establish the primitive community, and to rebuild their houses on the old spot, in spite of the very considerable amount of labour which this entailed. There were public rejoicings to celebrate the return to the old customs of the *mir*. One peasant alone refused to give up his separate holding: he was dishonoured and declared a traitor by the whole village[2]. In the eyes of the Russian peasant every attempt to withdraw from the bonds of the community is

[1] See the interesting report of Mr Michell in *Reports respecting the Tenure of Land in the several Countries of Europe.*
[2] Eckardt, *Russlands ländliche Zustände*, § 102.

a desertion, a theft, a crime for which there can be no pardon.

What is a still more curious fact, is, that the German colonies established in Russia have spontaneously adopted the periodic partition of the land. In the village of Paninskoï, near the Volga, peopled by colonists from Westphalia, M. de Haxthausen states that the commune effects a new partition of the soil every three, six or nine years, according to the increase in the number of inhabitants. The other German colonies in the government of Saratoff have also demanded and obtained permission to adopt the same system. Tartar agriculturists practise this Russian method of partition. It is also found among the people of Little Russia, in the district of Voronege and in Bessarabia.

In spite of the periodic partition, inequality has been introduced into the *mir*, and many peasants have no land. First, certain inhabitants of superior intelligence or influence, by means of brandy, acquired a larger share. The *mougik* calls them the "consumers of the *mir*" (*miroiedy*). Others were too poor or too idle to cultivate a share; they live by wages. In a very instructive work of Prince *Vasiltchikof*, partial statistics from a province are given, from which it appears that out of 1,193,000 households, 75,000 have no land at all, and 7,400 have only preserved the hereditary enclosure[1].

The patriarchal family is the basis of the commune; and the members of the *mir* are generally considered as descended from a common ancestor. Family ties have maintained a force among the Russians, as also among the Slavs of the Danube and the Balkan, which they have lost elsewhere. The family is a sort of perpetual corporation. It is governed by a chief called "the ancient," with almost absolute authority. All property is in common. There is usually neither succession nor partition. The house, the garden, the agricultural implements, the stock, the produce—moveables of every description—remain the collective property of all the members of the family. No one thinks of claiming a separate share. On the death of the father of a family, his authority and administra-

[1] See the excellent article of M. Anatole Leroy Beaulieu in the *Revue des Deux Mondes* of November 15, 1876.

tion devolve on the eldest member of the house: in some districts, on the eldest son; in others, on the eldest brother of the deceased, provided he live under the same roof. In some parts, too, the members of the family themselves elect the new chief. If all the survivors are under age, a relation establishes himself with them and becomes a co-proprietor. The head of the family is called *Khozain*, which signifies "the administrator," or *Bolshak*, that is, the "great one[1]."

When, on a death, a division of property takes place, which is less rare than in former times, it is not made according to the degrees of relationship, but each adult male living in the house takes an equal share. An orphan cannot succeed for his father by representation; and those who have left the paternal roof have no right of succession. The females remain in the charge of one branch or other of the family, and receive a portion on their marriage.

In the north, the house passes to the eldest son. In the south, the youngest inherits it, because, ordinarily, the eldest has set up a separate establishment during the lifetime of his father. It is not blood, or descent, which gives the title to succeed, but a much more effective title, co-operation in the labour which has produced the property whose division is in question. The adult uncle, nephew, and cousin, have laboured together: they shall take an equal portion. The young girl and the child have contributed nothing to production: their wants will be provided for, but they have no right to a share in the inheritance.

In the Russian family as in the Russian state, the idea of authority and power is confused with that of age and paternity. The word *starosta* signifies "the old;" the word *starshina* is in the comparative, "older." The emperor is the "father,"—the "little father." This is the real principle of the patriarchal system.

Since the emancipation the old patriarchal family has tended to fall asunder[2]. The sentiment of individual independence is weakening and destroying it. The young people

[1] See Mackenzie Wallace, *Russia*, I. c. 6; and also, for description of the *mir*, c. 8 and 9.

[2] The report of the commission appointed May 26, 1875, with the Minister of the Domains, Waluzew, as president, contains much information gathered from different provinces, which proves that the family division is being effected on all

no longer obey the "ancient." The women quarrel about the task they have to perform. The married son longs to have his own dwelling. He can claim his share of the land; and, as the Russian peasant soon builds himself a house of wood, which he shapes, axe in hand, with marvellous facility, each couple sets up a separate establishment for itself.

The dissolution of the patriarchal family will perhaps bring about that of the village community, because it is in the union of the domestic hearth that the habits of fraternity, the indifference to individual interest, and the communist sentiments, which preserve the collective property of the *mir*, are developed. Formerly, the method of overcoming the resistance of obstinate members or of getting rid of incorrigible idlers was to hand them over for the conscription. The fathers of families, in conjunction with the *starosta*, thus purged the community of all recalcitrants. It is the habit of submission to the despotic authority of the father which has given the Russian people the spirit of obedience, of self-denial, and gentleness, characteristic of them.

How marked is the contrast between the Russian and the American! The latter, eager for change and action, athirst for gain, always discontented with his position, always in search of novelty, freed from parental authority in his earliest years, accustomed to count on no one but himself and to obey nothing but the law, which he has himself helped to make, is a finished type of individualism. The Russian, on the contrary, resigned to his lot, attached to ancient tradition, always ready to obey the orders of his superiors, full of veneration for his priests and his emperor, and content with an existence, which he never seeks to improve,—is perhaps happier and more light-hearted than the enterprising and unsettled Yankee, in the midst of his riches and his progress.

Animated discussions have been raised recently as to the origin of the community of lands, which is the actual basis of the *mir*. The Russian patriots see in it "the primordial institution" of the great Slavonic race. This opinion, propagated in Europe by the writings of the Baron de Haxthausen,

sides, to the general disadvantage. For the disastrous consequences of the partition, see the work of Von Reussler already quoted.

was admitted without dispute, until Tchitcherine and Bistram[1] lately maintained a directly opposite theory. According to them, the peasants, up to the end of the sixteenth century, were free and independent owners of the land they cultivated. They made terms with the lord as to the rent to be paid, and sold, inherited, let or bequeathed their holdings, without any interference of communal or sèignorial authority. Community of land and periodical partition were unknown. The commune exercised no supervision over its members. The independence of the peasants, however, suited neither the sovereign, who wanted taxes and soldiers, nor the lords, who required hands to cultivate their land. A ukase of Czar Fedor Ivanovitch, in 1592, attached the peasants to the soil. The lords established registers, in which were enrolled all the labourers living on the land, which they regarded as their domain; and the peasants were forbidden to remove without permission. Later laws of Boris Godunof introduced serfage definitely. Under Peter I. the poll-tax on every male inhabitant, the joint responsibility of the commune for the payment of taxes and for providing recruits, and the census, induced the peasants to put their lands in community, and to divide them in proportion to the working hands, that each might be in a position to contribute to the communal expenses, in proportion to his strength. "Agrarian community," says M. Tchitcherine in conclusion, "was the product of slavery; it will disappear with it before liberty."

The theory of MM. Tchitcherine and Bistram was strongly opposed by Professor J. Belazew in the *Russkaja Besseda.*—According to this writer, the Russian commune with periodic partition of the soil has existed from the earliest times, being in conformity with the genius of the Slav race. Families, which could cultivate more land and pay higher taxes had a larger portion allotted to them. No doubt, as Tchitcherine shews, private property did exist; it even predominated in certain parts of Russia. But we must not therefore conclude that it was the ordinary system. Common property was the rule. Professor Hergei Ssolowzew[2] has lent the support of his

[1] *Staatswörterbuch von Bluntschli. Leibeigenschaft in Russland*, p. 396—411. Von Bistram, *Die rechtliche Natur der Stadt- und Landgemeinde*, St Petersburg, 1866.
[2] See *Russki Vestnik*, Lib. 22. p. 289.

authority to Belazew's opinion; and now it is generally admitted in Russian literature, that collective property did exist in ancient Russia. The more accurate knowledge of the primitive history of the Russian commune is chiefly due to the researches of Professor Leschkow[1]. Originally the organization is found to be exactly the same as in the Germanic *mark*, under the name of *werw* in Southern Russia, and of *pogost* or *guba* further North. In the *Werw*, the elders, or "*centeniers*," administer justice and maintain order. But the partition of the collective domain, and all questions of importance, are decided in a general assembly. After the appearance of the Warègue princes, a territorial aristocracy sprang up; it usurped many of the lands occupied by poor cultivators, who remained free, but were bound to certain services. The most ancient law of Russia, the *Ruskaja Prawda*, contains six articles to protect this class of occupiers from the exactions of their lords, and to regulate their condition. By the side of the cultivators, or co-partners of the *mark*, and the tenants of the seignorial lands, were a large number of independent proprietors, who sprang into existence in the following way. The extent of unoccupied soil being very great, the settlers who brought it into cultivation acquired a life ownership, and, in fact, even a kind of hereditary right in it. The same right exists in Java, where the system of collective property is in force under the same conditions as in Russia. The mode of cultivation employed by the settlers was that always practised when primitive forests are reclaimed. They built themselves a rough log-house, made so as to be moveable. They then set fire to the surrounding forest, and cultivated the soil until it was exhausted; then they migrated further. In consequence of this nomadic cultivation a great number of small hamlets were formed, which were not subject to the rules of the *mark*. The necessity of periodic partition did not make itself felt, until the population was permanently fixed and become so large as to make the system of intermittent cultivation insufficient. This

[1] *Russki Parod i Gosoudarstvo*, p. 69—71, &c. M. Von Keussler mentions the chief sources of the history of the agrarian system and the rural slaves in Russia, in his work already quoted, *Geschichte des bäuerlichen Gemeindebesitzes*, p. 16.

explains how the lot of each family, the *Utschastok*, was at first the subject of a life ownership, or even of hereditary ownership, and how partition was only introduced at a later period. Exactly the same process is being carried on, even at the present day, among the Cossacks.

In the fourteenth century, we find the *wolost*, with its council of elders, comprising several villages (*selo*), each with their chief (*golovi*), their "*centenier*" (*sofskie*), and their elders (*starostis*). In the sixteenth century, the communes still enjoy great independence. The code of 1497, and that of 1550, recognize and protect their privileges in the face of the nobles and the representatives of the prince. Soon after, however, under John IV., and still more under his successor Feodor, the taxes become excessive; and, in order to check emigration, a ukase of 1592 attaches the peasants to the soil, and in return grants them a right in the soil which they cultivate. The ancient communal system differed, in some respects, from that which is in force at the present day. Every member of the commune obtained as much land as he could cultivate. This portion was called *Udel, Utschastok*, and also *Sherebi*, a word corresponding to the *Loosgüter*, the lots, and recalling the drawing by lot. The whole of a peasant's property, with the right of enjoyment attached to it, was the *Dwor*. The *Dwor* comprised the house and garden, or orchard (*usadba*), the cultivated land (*obsha*), of an average extent of 9 to 15 *dessiatines*, the meadows, the pasturage, the wood, the marsh, and the river for fishing. It was precisely the German *Bauergut*, or *Hube*. There was however some difference between the Germanic and Russian *mark*. The latter remained more democratic;—the right to a lot of land being recognized in every one, even in the strangers, who could be adopted into the families without difficulty. Among the Germans the mere inhabitants, *Beisassen*, were excluded from the partition; and at a very early period some families had usurped a larger share, while others had allowed their right to perish. In the middle ages the Germanic *mark*, with the large village in the centre, was a fixed organization, closed and, so to speak, crystallized; while in Russia the *Werw*, with its immense extent of uncultivated land, its widely scattered houses, and

its cultivators always extending the area of their nomadic cultivation, was still in process of formation[1]. The Russian commune was based on the same principles as that of the Germans and other nations, but external circumstances, and particularly the more primitive system of cultivation, modified their practical application. Even now, in the steppes of the South, the agrarian organization has hardly advanced to the point which it had reached in Germany in the days of Tacitus. Mr Mackenzie Wallace has observed a custom there which was in force in Germany at the most remote period. When the boundaries are traced between two neighbouring *marks*, children are brought to assist at the operation, and smartly beaten, that, the fact being impressed on their memory, they may be able to give evidence on the matter all their lives. In the fourteenth and fifteenth century, when the increase of population made it necessary to keep the soil in permanent cultivation by the triennial arrangement of crops, the compulsory rotation, or *Flurzwang*, became general. The idea that the land of the commune belonged to all the inhabitants collectively was part of the juristic instinct of the people; but, originally, there was no necessity for the application of the principle, because every family could cultivate as much of the steppe, or forest, as it required. We can thus grasp the very important phase in economic progress and in the evolution of landed property, where periodic partition is preceded by the free power of occupation, the clan's right of eminent domain being however never lost sight of. The transformation is going on even in our own day. In the colonies established in this century on the steppes in New Russia, there was at first the system of free occupation: every one took as much land and meadow as he required: but as the population increased disputes arose, to put an end to which periodic partition was introduced, and became general in the provinces of Kerson, Tauride, Woronesh, and Ssamara.

The same was also the case among the Don Cossacks. Originally every one might cut down timber, cultivate land, or depasture cattle at will; and all the territory was the un-

[1] According to von Reussler, the name of the village, *derewva*, from *derevo*, land newly reclaimed, indicates the onward march of colonization.

divided property of the whole nation. Subsequently the territory had to be divided among the *Stanitsas*. The domain of each *Stanitsa*, called *jart*, was subject to the right of free occupation. The population, however, increasing, it was necessary to have recourse to periodic partition, which was finally regulated in 1835. These partitions are made per head. Every male over seventeen years of age is entitled to 15 *dessiatines* of arable land. Mr Mackenzie Wallace states that this system has put an end to disputes, and, by re-establishing equality, has improved the condition of the poor. The meadows are mown in common, and the hay divided. Among the Cossacks of the Oural the right of occupying the meadows is regulated in this way: On a fixed day every member is entitled to appropriate all the grass within the circle that he can trace out with the scythe between morning and evening. In Switzerland, in the mountain cantons, we find a very similar custom. On the thirteenth of August, the "Wild mower" (*Wildheuer*) at sunrise occupies one of the grassy ridges which are to be seen on the summit of the rocks, in almost inaccessible spots, and is entitled to make the hay on it, which he afterwards ties into bundles and throws into the valley below. In Siberia, in consequence of the extent of land unoccupied, the peasants transmit by descent the lands which they cultivate. But they may not alienate them out of the family, and the eminent domain of the commune is recognized, for already in many localities, especially Slovina and Tobolsk, where inequality had increased with the population, periodic partition has been introduced[1].

Some towns still have common lands, which they distribute. Thus the town of Mologa, in the province of Jaroslaw, possesses a pasturage, which is divided into eleven parts; and each of the eleven *sotnis*, or groups of burgesses, successively obtains each part, so that, in eleven years, each *sotni* has occupied all the lots. These *sotnis* recall the *Rhodes* of Appenzell.

From the facts collected by Von Reussler, it would appear that in ancient Russia the right of every one to an equal share of the communal domain was not as general as it

[1] See *Russkaja Besseda*, 1860, v. II. p. 119, and N. Flerowski, *Polojenie rabotchazvo klassa vi Rossi.* Petersburg, 1869, p. 75.

is to-day. The substitution of an individual poll-tax for the old land-tax has given this right extension and increased vigour. As every one had to pay the tax and the commune was responsible for it, it was to the interest of the latter to provide every one with sufficient land to enable him to pay his share of the sum total due, and this share being the same for all, the lot of land was also made equal.

When we find village communities among all Slav nations, among the Germans, and the nations of antiquity, in America, in China, India, Java, in all societies, in a word, when they quit the nomadic and pastoral state and adopt the agricultural system, it is impossible to admit the theory that in Russia this institution, which survives to the present day, was introduced simply in consequence of the laws of Fédor, of Boris Godunof, or of Peter I. The principle of collective property existed from the first in Russia, as it did everywhere else. But the vast extent of unoccupied land was favourable to the dispersion of families and the establishment of several ownership. Periodic partition was not introduced generally, as we now see it, until the growth of the population made it no longer possible for every one to take at his will a vacant lot in the forest or the steppe. The poll-tax and the joint responsibility of the commune accelerated the movement, because every one, in order to be able to pay his share of the tax, required his parcel of ground.

CHAPTER III.

ECONOMIC RESULTS OF THE RUSSIAN MIR.

THE advantages and inconveniences of collective communal property have been for twenty years the subject of deep discussions between the partisans and adversaries of the system. M. Von Reussler, in his book already often quoted, has collected, from Russian sources, all the arguments adduced on either side, as well as the discussions which took place on the subject at the Agricultural Congress at St Petersburg in 1865. The great agricultural enquiry in 1873, the results of which have been collected by the Government in five volumes, also contains much material for the study of this question[1].

The Panslavists believe that the community of the *mir* will ensure the future greatness of Russia. Western nations, they say, have possessed similar institutions; but, under the influence of feudalism and the civil law, they have allowed them to perish. They will be punished for it by social struggles, and by the implacable contest between the rich and the poor.

It is contrary to justice, they add, that the soil, which is the common patrimony of all mankind, should be appropriated by a few families. Labour may be a lawful title of ownership in the product created by it; but not in the soil, which it does not

[1] This commission, presided over by a person of great eminence, the "minister of Domains," P. Waluzef, received more than a thousand reports and more than two hundred verbal depositions. Unfortunately, as M. A. Leroy Beaulieu remarks, only persons of the higher classes were heard, who are generally hostile to the system of communities. M. Von Reussler sums up the opinions of the writers,—A. Butawski, J. Ssolozew, Th. Von Thörner, Von Buschen, Hertzen, Tschitscherino, Kawelin, Jurin, Ssawitsch, Koschelew, Ssamarin, Belazew, Tschernuschewski, Besobrasow, Panazew, &c.

create. In Russia, the commune recognizes in every individual able to labour the right to claim a share in the soil, which allows him to live on the fruits of his energy.

Pauperism, the bane of Western societies, is unknown in the *mir;* it cannot come into existence there, for every one has the means of subsistence, and each family takes care of its old and infirm members. In the West, a numerous offspring is an evil that is avoided by methods which certain economists advocate, but which morality condemns. In Russia, the birth of a child is always matter of rejoicing; for it brings the family new strength for the future, and entitles them to claim additional land for cultivation. The population can increase. There are vast territories in Europe to be colonised; and, when these are stocked, the immense plateaus of Asia will open for the indefinite expansion of the great Slavonic race. So long as the race preserves the venerable institution of the *mir*, it will escape class struggles and social war, the most terrible of all contests, for it caused the fall and subjection of ancient societies, and at the present day is threatening modern societies with the same dangers. The Russian nation will remain united and therefore strong: it will continue to increase on the basis of the "primordial institution," which alone can guarantee order, because it alone allows of the organisation of justice among mankind.

Such is the language of the advocates of the *mir;*—it assumes various shades. First, there are the conservatives, such as the Baron von Haxthausen, who would protect the patriarchal system and the ancient institutions. Then come the numerous group of Slavophiles, such as Aksakof, Byellyayef, Koschelyef, Samarine, and Prince Tscherkasski, followed by many persons in high society, and distinguished women who take very exalted views of the great destiny reserved for the Slavonic race. Finally, there are the socialist-democrats of the school of Herzen and Bakunin, such as Tschernischewski and Panaeff, who maintain that the agrarian organisation of the *mir* contains the solution of the social problem, sought in vain by Saint-Simon, Owen and Proudhon.

The institutions of the Russian commune are so completely at variance with all our economic principles and with the

sentiments of individual property developed in us by habit, that we can with difficulty form a conception of their existence. The *mir* seems to us a kind of social monstrosity,—a legacy of barbarian ages, to which modern progress will not stay to do justice. Yet a glance round us is sufficient to shew how the principle of collectivity is invading us on different sides, and threatening the independence of isolated individualism.

On the one hand joint-stock companies, a collective power from which responsibility is entirely banished, not only monopolise all the large industries, but crush, under their irresistible competition, even the artisans and small traders on a ground where they seemed unassailable,—the making of garments, of boots, furniture, and retail business. Joint-stock companies are formed for every purpose, and multiply continually. Every one soon will be a shareholder or in receipt of a salary; there will be no room for the small independent tradesman, or the independent workman belonging to no society.

On the other hand, we see increasing in number, with alarming rapidity, societies in which the principle of community is applied even more rigorously than in the Russian *mir*, and where all distinction of *meum* and *tuum* is strictly proscribed. I refer to religious houses. Once grant these houses a civil personality and a right to take landed property on the same title as individuals, and the struggle between individualism and collectivity will not remain long undecided. Within a hundred years religious houses will be temporal lords of the land in every catholic country; and the whole soil will be in their hands.

Under the old system, every sovereign,—even the most devoted to the church, such as Philip II. and Maria Theresa,—was constantly issuing law upon law to stop the encroachments of mortmain. Modern laws forbid religious bodies to exist as civil persons or to hold property as such: yet we see them multiplying under our eyes in France, in Belgium, in Holland, Prussia and England;—in every country where violent revolutions have not expelled them, as in Spain, Italy or Portugal. Their wealth and power increase in proportion as the most firmly established governments have recourse to exceptional measures for their limitation. In Belgium they will soon be strong enough to

brave all opposition and to dictate their wishes to the legislature and the sovereign. With a legislation such as that of the United States on the subject of foundations and civil persons, religious communities would eventually usurp the whole soil.

The example of religious houses may help us to understand the existence of village communities. Undoubtedly man always pursues his own individual interest. He seeks happiness and shuns pain; and the more perfect the organisation of responsibility, the more will he be compelled to do well and to labour. But as faith discloses to him the perspective of eternal felicity in another life, it may be, that to become worthy of this, he will work here below obediently and devotedly, as in certain monasteries.

Custom and tradition also exercised, in primitive times, an influence of which moderns can scarcely conceive. It is under the influence of these motives that agricultural labour is carried on in village communities. Besides, notwithstanding the periodic partition of lands, it is always to the advantage of the cultivator to till it well, as he alone takes the harvest, be it good or bad. This practice, therefore, strange as it appears, does not prevent the usufructuaries giving the soil good manure and proper dressings. The Irish tenant at will, or even the tenant who has only a short lease of three or six years, a term unfortunately too common, has still less security for the future than the Russian peasant, from whom the *mir*, every nine or twelve years, takes the field which he cultivates, only to give him others of at least equal value.

If the soil of Russia is badly cultivated by the peasants, it is because, until lately bowed beneath the yoke of serfage, they want instruction, motive, and energy. A visit to the arable land of the *allmends* in Switzerland and the district of Baden is sufficient to prove that the system of temporary enjoyment is not the cause of the backward state of rural economy. The *allmends* are also divided from time to time among the usufructuaries, and yet they are in a perfect state of cultivation, while, on the other hand, in Russia, the lands, which are the private property of the nobles, are no better cultivated than the lands of the communes.

What periodic partition does prevent, in great measure, is permanent and costly improvement, which a temporary possessor will not execute, as another would reap the profits. It is in this respect that the village community is evidently inferior to individual property. None but the hereditary proprietor will make the sacrifice necessary for the permanent improvement of sterile soil, and for sinking the capital necessary for perfect, intensive cultivation. In all western Europe we have to admire the marvels accomplished by private ownership; while, in Russia, agriculture abides by the processes of two thousand years ago.

Yet there would be nothing to prevent the commune itself executing large permanent works, for irrigation, drainage or roads, such as are carried out by the communal administration of the towns and the *Allmends* in Switzerland. By the use of collective resources and combined labour, much more complete results are obtained than by the isolated, intermittent, and insufficient efforts of individuals. If nothing of the kind is done in Russia it is for want of information, and not in consequence of any incurable defect in the agrarian system.

The results of community and periodic partition are not at all alike in the two great agricultural divisions of Russia.

In the circle of the "black" soil the land gives abundant harvests without manure and almost without labour. So long as the peasants are content with growing corn, there is no necessity to sink a large capital in the land; they need only till it and gather in the harvest. The system of partition is, therefore, no obstacle to works of improvement, which the cultivator would not execute in any case. The alluvial lands of the Banat in Hungary, and those of Moldavia, although subject to private ownership, are no better cultivated than the "black" soil of Russia under the system of community.

In the light soil of the centre and the north, which would require copious manuring and works of permanent improvement, too frequent periodic partition undoubtedly hinders the progress of agriculture. Central Russia is the country where agricultural produce is the poorest in all Europe. It is estimated that the cultivator only reaps three or four times what he has sown. It is true that the laws of Von Thunen might be called

in to explain this fact. In a thinly peopled country, where there are no great centres of consumption, there is no advantage in carrying on intensive agriculture. It is better to call into action the natural forces, offered by the vast space still undisposed of, than to accumulate a large capital on a small area, as one is compelled to do when the population becomes denser. Thus it is that the English in Australia, while practising a most perfect system of market-gardening in the neighbourhood of Melbourne, Sydney or Brisbane, devote themselves, in the interior of the country, to the pastoral system in all its primitive simplicity.

The point in the organization of the *mir*, which is really calculated to alarm economists, is that, contrary to the maxims of Malthus, it removes every obstacle to the increase of population, and even offers a premium for the multiplying of offspring. In fact, every additional head gives a right to a new share on the partition. It seems, therefore, that the population ought to increase more rapidly than anywhere else. This is the chief objection raised by Mill to every plan of reform in a communistic sense. Yet, strange as it seems, Russia like France is one of the countries where the population increases most slowly. The period required for the doubling of the population, which is about a hundred and twenty years for France, is ninety years for Russia; while in England and Prussia it is only fifty years. What is the cause of this unexpected phenomenon, which seems to contradict all the previsions of political economy?

There are various circumstances contributing to produce the result. The first is the large mortality among young children. The fertility of marriages is a little greater in Russia than in other European states. The eminent Russian statistician, Von Buschen, makes the number of children for each married couple 4·96 in Russia; while in Prussia it is only reckoned at 4·23; in Belgium at 4·72; and in England at 3·77[1]. According to M. Quételet[2], the number of births is relatively nearly twice as large in Russia as in France. The number of children, however, is not highest among the peasants.

[1] *Aperçu statistique des forces productives de la Russie*, Paris, 1867.
[2] *Physique sociale*, Brussels, 1869.

Thus, in the province of Novgorod, which may serve as an example for the rest, the number of children to each marriage was 5·8 for the higher classes; 5·5 for the peasants; 5 for the bourgeois; 4·8 for the smaller class of traders; and 3·75 for the floating population.

The mortality in Russia, compared with the number of inhabitants, is in the proportion of 1 to 26; while in Prussia it is 1 to 36; in France 1 to 39; in Belgium 1 to 43; and in England 1 to 49. The average length of life in Russia is, therefore, very much less than that given for other countries. Instead of being about thirty-five years, as in the countries of Western Europe, it is only from twenty-two to twenty-seven years. In the agricultural region of the Volga it sinks to twenty years, and in the provinces of Viatka, Perm and Orenbourg, even to fifteen. This unsatisfactory average is due especially to the great mortality among young children. M. Buniakovski, a member of the Imperial Academy of St Petersburg, states, in his work on the *Laws of Mortality in Russia*, that out of a thousand male children only five hundred and ninety-three attain the age of five years. Nearly half die before that time, and about one-third die within a year of their birth. There is yet another fact, which is well known, to be taken into account, namely, that children dying before they are baptized are not registered at all.

Thus the great mortality among infants is the principal cause which prevents the increase of the population. It is want of proper care that carries off so many people. According to M. Giliarovski, who has made special researches as to infant mortality in Russia, the mothers, overburdened with work, are in many cases incapable of nursing their new-born children. They give them with the bottle a kind of gruel of bitter rye-meal, which produces diarrhœa. Custom requires the mother, three days after her confinement, to take a vapour bath; and this bath, for want of proper precaution, has often evil results. The baptism, which consists of a complete immersion, is also in winter the cause of many diseases, and even of deaths. In summer the labours of the harvest are even more fatal: 75 per cent. of the children who die succumb during the months of July and August, because the mothers,

being detained all day in the fields, are obliged to entirely abandon their nurslings.

The difference of age frequently existing between husband and wife is also a check to the increase of the population. This disparity is the result of the patriarchal system of the family. The working hand is rare in Russia, and valuable in proportion. It is, therefore, to the interest of each family to find among its members the number of hands necessary for the cultivation of the portion of land belonging to it. The head of the family, accordingly, is anxious to marry his sons as early as possible, that the young woman may discharge the duties of the servant, to whom high wages would have to be paid. In this way young boys of eight or ten are married to women of five-and-twenty or thirty years of age.

Two very mischievous consequences result from these ill-assorted marriages. In the first place, the woman is approaching the decline of life, when the husband arrives at the flower of his age. In the second place, the head of the family neglects his own superannuated wife, and abuses the influence which he exercises over the wife of his son, who is too young either to enjoy his rights or to protect them. An incestuous promiscuousness is thus introduced as a consequence of serfage, just as other kinds of immorality resulted from slavery in antiquity and in America. Since the emancipation, this evil, they tell us, is becoming less frequent, because the young couples refuse to submit any longer to the ultra-patriarchal prerogative exercised by the head of the family.

Although the village festivals usually terminate in games and debauches, in which drunkenness and gross lasciviousness have full career, the number of illegitimate births is smaller in Russia than elsewhere; for it does not rise above 3·5 per cent. From this we may conclude that the immorality is not such as depicted by certain authors; but they assert that the consequences of misconduct are prevented by practices even more reprehensible[1].

It is evident that the increase of the population, to which the partition of land seems calculated to be favourable, is only checked by causes which will cease to operate with the progress

[1] See Mr Michell's Report in the Blue Book before quoted.

of liberty, morality and comfort. To make room for the new families which a more advanced civilization would call into being, there would then remain but one resource—emigration and colonization.

The system of the *mir* was, in fact, formerly a powerful agent of colonization. This is a fact recognized at the present day, and brought prominently forward by M. Julius Faucher[1]. When the mother village became overcrowded, a group was detached, which advanced towards the east, into the profound forest and vast steppes, where they found themselves face to face with nomadic hunting-tribes. The individual was too weak to clear the woods, or to resist the barbarians: united efforts and the strictest combination were required. It is, therefore, due to the principle of collectivity that all central and Eastern Russia was peopled. The *mir* executed exactly the same work of agricultural conquest that the monasteries accomplished in certain parts of Germany and the Low Countries. There was the same principle of community producing the same result of colonization.

While the Germans and even the Western Slavs gradually passed away from primitive community, the Russians preserved it, because they could continually occupy new territories as they advanced into the immense plains of the East. So that, as is well said by M. Faucher, the law of progress has been for them not change, but expansion, as it is among the Chinese, with whom they came in contact in Asia.

To sum up briefly the disadvantages charged against the agrarian organization of the *mir*:

The system is opposed to the progress of intensive agriculture, because it prevents capital being sunk in the land.

The intermingling of the various parcels assigned to each family in the partition leads to compulsory agriculture, or the *Flurzwang;* and so favours routine, and maintains the old methods of cropping.

The joint responsibility of all the members of the commune for recruits and for the payment of the taxes, tends to make the industrious pay the share of the idle, and so weakens the motive of individual interest. The moment this motive is

[1] In the volume of the Cobden Club: *Essays on Land Tenure.*

weakened, it must be replaced by constraint, that the social life may not stop. It is thus that the commune exercises so large a discretionary authority over its members, that the peasant, as it has been said, if no longer the serf of the lord, is still the serf of the commune. Individual interest not being sufficiently brought into play, men become idle; and the whole social body is in a state of stagnation. Hence the extreme slowness of progress in Russia. To estimate the relative value of the collective principle and of the principle of individualism, we need only compare Russia and the United States.

The partizans of the system of the Russian commune reply:—

Granted that the joint responsibility of the villagers to the government is a bad thing; but it is not inherent in the agrarian organization of the *mir*. Suppress this, and it will no longer be necessary to grant the commune despotic authority over its members. If great works of improvement are necessary, there is nothing to prevent the assembly of heads of families from voting them, or the communal authority from executing them, as is the custom in towns.

Instead of assigning to each family several scattered parcels, they might form compact shares, sufficiently equal in value. Moreover, the majority of cultivators are able to adopt for the whole territory a systematic rotation of crops; and then the absence of enclosures and visible divisions would allow of the whole surface being cultivated by means of powerful machines, as if it only formed a single farm.

According to M. Schedo-Ferroti, the advantages which the partizans of the *mir* claim for their system are five in number.

First, every able labourer having the right to claim a share in the land of the commune, a proletariat with all its miseries and dangers cannot arise.

Secondly, the children do not suffer for the idleness, the misfortune, or the extravagance of their parents.

Thirdly, each family being proprietor, or, more strictly speaking, an usufructuary of a portion of the soil, there exists an element of order, of conservatism and tradition, which preserves the society from social disorders.

Fourthly, the soil remaining the inalienable patrimony of all the inhabitants, there is no ground to fear the struggle between what is elsewhere known as capital and labour.

Finally, the system of the *mir* is very favourable to colonization, an enormous advantage for Russia, which still possesses, in Europe and in Asia, vast uninhabited territories.

It is stated that Cavour once said to a Russian diplomatist, "What will some day make your country master of Europe is, not its armies, but its communal system!" King Frederic William IV. of Prussia exclaimed, in 1848, "To-day begins the era of Slavonic history!"

Schedo-Ferroti and Kawelin wish to reform this system without abolishing its principle. They would give each family the hereditary enjoyment of its parcel, which it might sell, devise, or lease. The commune would retain only the eminent domain; and, to avoid the accumulation of property in the hands of a few people, a maximum would be fixed. At Rome and in Greece we meet with laws of this kind; but similar restrictions are scarcely in accordance with the spirit of modern legislation.

The institution of the *mir* forms a perfect, traditional system, which ought either to be respected or replaced entirely by independent property. We may say of it, as of a celebrated order, *Sit ut est aut non sit.* I think the government should not rudely and authoritatively destroy an organization centuries old, which penetrates with such deep roots into the whole life and history of the Russian nation. Give free course to social influences, and institutions which are obstacles to progress will gradually disappear, or be more or less modified according to new requirements. We should see with regret the suppression of a system which, if improved, may be the safeguard of modern democracy.

With regard to the Russian system of attributing the collective ownership of the soil to the commune, and a temporary enjoyment of an equal share to each family, there is no doubt that, as practised in Russia, the custom presents insurmountable obstacles to agricultural progress. The intermingling of the parcels forming the several lots and the consequent *Flurzwang,* the compulsory rotation and cultivation of the same crop

on the whole of a particular zone, imposed on all the cultivators, prevents individual initiative introducing improvements in agricultural processes on its own account. These improvements might be decided on by the assembly of cultivators; but, for this, it requires the majority to possess an amount of enlightenment, which is evidently wanting in them. Hence routine must of necessity prevail.

These undeniable drawbacks are not absolutely inherent in the system, which they have almost universally accompanied. In the first place, an independent family lot might be given to each family for it to cultivate as it liked for a period of twenty years, or during the lifetime of the father. The position would then be similar to that of a commune belonging to an individual proprietor, who granted leases to tenants for terms of twenty or thirty years, as is commonly done in England. The advantage of thorough cultivation would be the same in the two cases; there would be no obstacle to the employment of the best agricultural processes. The only difference would be, that the cultivators, instead of being tenants of a lord, would be tenants of the commune; and that, instead of paying a rent continually increasing with each economic advance, they would enjoy their portion of the soil gratuitously and in virtue of their natural right of possession, which certainly would make their position no worse.

The opponents of the Russian system always attack it with regard to property, as if in the West the soil was always cultivated by its owners; whereas the converse of this is the case: the larger part of the soil is cultivated by tenants who have only the temporary use, and that for a term generally shorter than that which is secured to the Russian usufructuary. I admit that the condition of the proprietor is preferable to that of the usufructuary; but I maintain that that of the usufructuary is better than that of the tenant. And the Russian peasant has the usufruct of the land which he tills, or, at any rate, occupies it by virtue of a lease for a long term.

In England we often see small proprietors selling their property, to apply the proceeds of the sale to the cultivation of a large farm, which they take on lease and from which they derive large profits, by employing a relatively large capital.

The term is for twelve or eighteen years, at the outside; and yet this limited enjoyment seems to them sufficiently long for them to engage all that they possess in agricultural enterprise. In this case leases lead to more intensive cultivation than actual ownership, because they allow of the application of a larger capital to the land. These facts shew that enjoyment of land secured to an enterprising man for twenty years is sufficient to make it to his advantage to cultivate on the best methods possible. It is not, therefore, the shortness of the term of enjoyment in Russia which checks the progress of agriculture.

This system, moreover, offers a peculiar advantage. As he has not to buy the land, but receives it gratuitously, the peasant can invest all the capital belonging to him in the undertaking. Elsewhere he must first expend the purchase-money of the farm he intends to cultivate, or else pay the rent for it every year, which is so much reduction in the profits. Under the Russian system the cultivator has neither purchase-money nor rent to pay. He may, therefore, employ his whole capital to increase the fertility of the soil. In Russia, it is true, the cultivators have neither capital at their disposal, initiative spirit, nor the knowledge of rural economy necessary for the introduction of intensive scientific cultivation. But if all this is wanting, it is the fault of serfage, not of the system of collective property combined with individual enjoyment. This is shewn by an examination of the condition of the *allmends,* which are subject to the system of Russian community, in Switzerland and the country of Baden, and are nevertheless as well cultivated as the lands of private proprietors. Under the Russian system a man obtains the use of the instrument of labour, not by title of succession as heir to the fruits of his parents' toil, but by a personal title in virtue of his natural right to the property. There is succession in the commune, instead of succession in the family. It is true that one effect of the system may be to weaken the motive for labour in the father of a family, because he knows that his children are always entitled to a share in the common property, and that they will therefore never be reduced to absolute want. But, in the first place, he can leave them the house, the *instrumen-*

tum fundi, capital to carry on cultivation, and all the moveable property gathered together by him. The motive for economy and saving is not therefore destroyed. Besides, right of succession in the commune and by personal title seems, on principle, more conformable to justice and nature. A man can claim the enjoyment of a share in the productive soil the moment he is capable of tilling it for himself and has need of it to found a new family, instead of attaining to it by the accident of a death, perhaps too late, perhaps in the time when he is yet too young to cultivate his inheritance by his own labour.

Under the system of the civil law in force in the West, children only succeed on the death of their parents. At the moment they lose those who should be dearest to them, they attain to their property. This tends to produce, and does actually produce, unnatural sentiments. Literature and painting have often depicted in strong colours the immorality of this state of things, shewing the heir consoled in his grief by the thought of the money which it brings him. Often a horrible crime, at which humanity revolts, occurs to shew the danger of making the right of succession come to life with the death of the parents. Institutions, which attach the acquisition of property to the death of the father or mother, beget in the mind unnatural greed, which, when grown to excess in vicious natures, leads to parricide. If, on the contrary, a man is invested with his share in the inheritance, on attaining full age or on founding a new family, impatience to obtain his property will not arise to stifle or weaken his natural affections; and he will not have to balance the profit accruing from the loss of his relations.

Among the Slavs, where the ancient succession in the commune and in the family is maintained, the family has remained much more united than in the West. A bond of brotherly affection and patriarchal intimacy unites all its members. With us family feeling has lost almost all its force. Weakened by unwholesome cupidity, it constitutes but a very subordinate force in the social order.

In the Russian system personal responsibility is respected much more than with us. At one time it was thought right to extend to descendants, even "to the tenth generation," the

penalty of faults committed by their ancestors; as also to let the children enjoy the honours and titles earned by the father. In the present day we think it more equitable not to admit this hereditary responsibility, and to treat every one, considered alone, according to his merits or demerits. We no longer allow of hereditary offices or places in the political system. But, under the empire of the civil law, if the father has been extravagant or unfortunate, the children have nothing; and, on the other hand, if he has accumulated wealth, they may live in opulence and idleness, contrary to nature and morality, which demand that man should only live by the fruits of his labour, and not by the fruits of another man's labour. In the Russian commune the children are less liable to suffer for the faults of the father, and also have less right to enjoy the fruits of his merits and his energy. They obtain a share in the collective inheritance, and so work out their own destiny. The prosperity they may attain to they owe to themselves, not to their ancestors. The system is therefore more in accordance with the principle of individual responsibility.

Where this system of collective property exists, not, as in Russia, side by side with an aristocracy, which in its growth has usurped half the soil and imposed serfage on the peasants, but, in all its purity, as formerly among the Germans and Slavs, and in Servia and Java even to the present day, it attains to such democratic equality, that it is likely to produce in the society a kind of uniformity and rigidity little favourable to new enterprise and rapid progress. The primitive cantons of Switzerland afford us a picture of this social condition. On the other hand, the fact maintained by von Haxthausen is incontestable, that this system prevents the inequality of conditions becoming extreme, and that it also offers great securities for social peace. By retaining the soil in the possession of the commune, it gives no opportunity for a few powerful families to monopolize it. Moreover, the periodical allotment prevents the formation of a proletariat, as it assures to every one an inalienable portion of the common property. We may see around us, in some families, generation after generation transmitting the right of consuming much without producing anything; and in other families, generations continually toiling without ever attaining property.

When the natural right to a patrimony is respected and established in an institution, similar contrasts cannot present themselves: for there can be no class without inheritance. Generation succeeds to generation in the enjoyment of the collective domain, and in the obligation to labour to make it productive. The system is accordingly a preservative against social struggles and wars of class with class.

To this it has been replied, that if it prevents a real proletariat from being developed, it is by keeping every one in poverty, and so creating a nation of proletarians. Look, it is said, at the Russian peasant: his condition is hardly better than that of the agricultural labourer of the West. He is neither better clothed, better lodged, nor better fed. Equality is maintained, it is true, but it is the equality of destitution. To this we can answer: the wants of the Russian peasant are simple and few in number, but they are satisfied; his mode of life is not refined, but he knows no other and is content. There is this great difference between the Russian usufructuary and the proletarian of the West, that the latter depends for his living on his employer, while the former, enjoying a patrimony in his own management, is his own master and labours for himself. He has no fear for the future and lives in tranquillity; while with us the labourer is always fearing the reduction of his wages, the tenant the increase of his rent.

Moreover, we should not forget that the Russian system has never yet been tried under favourable conditions. The peasant, it is true, had his patrimony; but at the same time he was subject to serfage: he was, that is to say, at the mercy of the lord, to whom he owed half his time. At once proprietor and slave, the burden of this service was likely to discourage his zeal for labour and to stifle in the bud initiative spirit and the taste for improvements. Agriculture has never been fully developed where serfage existed. The abolition of serfage has put other impediments in the way of progress, by compelling the peasant to purchase the land which he occupied at an excessive price, and by depriving him of the use of the forest and pasturage which he had before. To form a correct estimate of the *mir* we should regard it under its normal conditions.

Suppose that the Russian peasants, now that they are

enfranchised, were to receive such instruction as is given in the American school, and that they were put on a level with the recent progress of agriculture: by an understanding such as we have indicated, they could apply the most advanced processes of large cultivation as carried on in England. As it is, in consequence of the *Flurzwang*, or compulsory rotation, all the territory of the commune is treated as if it only formed a single farm. One-third part of the arable land of a particular tenant is sown with winter-grain, one-third with summer-grain, and the remaining third is fallow. Each has his share in the vast fields; but there are no boundaries, hedges, or ditches to separate them, and the division of the property is not shewn by any break in the cultivation. Nothing therefore would be easier than to execute the work of cultivation by means of a steam-plough bought at the common expense and used for the common profit. As every one has his share, or, as one may say, his stock, in the collective patrimony, the basis of co-operative cultivation is ready to hand. The *Flurzwang* and the absence of inclosures, which were impediments to small individual cultivation, would, on the contrary, become an element of success for associated agriculture on a large scale. Already the Russian peasants execute the different agricultural operations at the same time, after deliberation and decision come to in full assembly. This is exactly how they would proceed in a co-operative cultivation formed on the lines of the commune. There would then be a kind of joint-stock company, in which all the usufructuaries would be shareholders, and which would take measures for making the land productive according to scientific principles.

In France the complaint is that the subdivision of property prevents the application of machinery to agriculture. In England, on the other hand, the excessive concentration of property in a few hands is the cause of alarm. The Russian system, judiciously applied, would combine the advantages of small property and large cultivation. There would be more proprietors than in France, because all the cultivators would be, and are already, proprietors; and agriculture would be carried on on even a larger scale than in England, as the whole of every commune would be cultivated as a single farm. To

arrive at this result, the only thing necessary is to maintain collective property and allotment, while improving the legal organization, and, at the same time, to give the cultivators the instruction necessary for them to profit by it, by the adoption of an improved system of agriculture.

CHAPTER IV.

VILLAGE COMMUNITIES IN JAVA AND IN INDIA.

THE magnificent Dutch colony of Java, with more than seventeen millions of inhabitants, possesses a communal organization exactly similar to that of Russia. In some districts of the island private property as applied to the soil is to be met with; but, as a general rule, the land is the property of the commune. By virtue of the principles of the Koran, accepted in all Mohammedan countries, the sovereign possesses the eminent domain. He is the true and only proprietor; and, by this title, he levies the taxes in kind which represent rent, and exacts the *corvée*.

In Java, according to the *adat*, or custom, the cultivator was bound to hand over to the sovereign the fifth part of the produce, and to labour for him one day in five. The native princes went so far as to demand the half of the crop in the irrigated rice-fields, and the third part from the other fields. The Dutch re-established the old *adat*; and contented themselves with one day's work in seven, applying the labour to the cultivation of sugar and coffee, according to the system of General Van den Bosch.

As in Russia, the village community is jointly responsible for furnishing the required number of days' labour and for the payment of the taxes. The use of a portion of the wood and waste land is common to all the inhabitants. But the property of these unoccupied lands is considered as belonging to the state. In the districts, where the soil is not the property of the commune, it often happens that the inhabitants have not the enjoyment of any common pasture. It was even asserted

that, in this case, no such right existed. But M. A. W. Kinder de Camarecq has proved, that even in villages where private property is to be met with, a right of common pasturage is also to be found. He quotes among others the village of Sembis in the district of Soemedang, in the Government of Preanger, where the *sawahs* are private property, and the *tegals*, or dry lands, common property, and where the hamlets or *kampongs* exercise the right of pasture on the unoccupied lands[1]. The *sawahs*, or irrigated rice-fields, are divided among the families, every year in some districts, every two or three years in others. As in the Russian village, the houses with the gardens attached to them are private property.

They cultivate principally rice, which forms almost the sole food of the Javanese. To conduct on to the fields the water coming down from the higher grounds, great labour is indispensable for the formation of canals. It is also necessary to surround all the fields with dikes to keep in the requisite amount of water, and to dig numerous trenches, with great care, to distribute it. These works, which require much intelligence, are executed by the inhabitants under the direction of the communal authorities.

The division of the *sawahs* is carried out according to families, but not everywhere on the same plan. In some villages, or *dessas*, the simple labourers who have no draught beasts, the *orang-menoempangs*, are excluded from the partition. According to the rules, which the Dutch Government is endeavouring to introduce, all the heads of families are to have a share, that they may all be able to furnish their payments in kind and the requisite number of days' work. The general custom seems to have been that, to obtain a share, a man must own a yoke, that is to say, a pair of buffaloes or oxen. Hence it follows that generally the *menoempangs*, or mere labourers, excluded from a share in the allotment, are a numerous body, and that every family has not its parcel of ground, as is sometimes supposed.

[1] See the interesting work, entitled *Bydrage tot de kennis der Volksinstellingen in de oostelyke Soenda-landen*, published in the *Tydschrift voor indische taal- land- en volkenkunde, uitgegeven door het Bataviaasch Genootschap van Kunsten en Wetenschappen.*

A law of 1859 ordains that the allotment should be made by the chief of the *dessa*, under the supervision of the commissioners of the district and of the "Residents" or prefects. A kind of rotation is observed in the assignment of the portions, so that each family in turn possesses all the lots to be disposed of.

The chief of the *dessa* is elected for the term of a year by those of the inhabitants who are entitled to a share in their soil; the election has to be ratified by the Resident. The chiefs or mayors (*Loerah* or *Koewoe*) are usually chosen from among the richest and most respected inhabitants, age being also a ground of preference. They obtain, almost everywhere, a larger share of land or one of better quality. The elders of the village (*kemitoeas*), who assist the chief with their advice, enjoy the same privilege, as also the secretary (*djoeroetoeli*), the priest (*moedin*), his assistant (*kabayan*), and the surveyor of irrigations (*kapala bandonyan*). The same custom existed among the Germans; the chiefs and principal men of the tribe obtained a larger lot: *Agri occupantur, quos mox inter se secundum dignationem partiuntur*[1].

The *sawahs* are generally well cultivated, although the peasants are obliged to put part of their time at the disposal of the government for the seignorial *corvées* (*heerediensten*) applied to public works, and also for the agricultural *corvées* (*kultuurdiensten*) devoted to the State coffee and sugar plantations. After the rice the people of Java obtain a second crop of a fast-growing nature, such as tobacco, or more especially maize, which is ripe in two months after it is sown. The raw produce of a *bouw*, which is about 1·75 acres, is estimated as worth for the two harvests from 170 to 200 florins, or from £16 to £17. This is a very good result, which the lands sown with grain in Europe seldom give[2].

I know of no complete treatise on the tenure and owner-

[1] Tacitus, *Germany*, c. XXVI.

[2] The first crop of rice, *paddi*, gives per *bouw* about 40 *picols* of nearly 140 lbs. each, which, at 8 francs the picol, makes about 320 francs. The second crop of maize gives 10,000 ears at 6½ francs per thousand, which makes 65 francs, that is to say about 385 francs, or between £15 and £16. The cultivation of a *bouw* of rice requires about thirty days' labour; that of the maize in the second crop twenty days.

ship of land in Java. To form an idea of it, we must gather together the hints scattered through official reports and in the excellent collection entitled *Tydschrift voor nederlandsch Indie*[1]. A note communicated to the Dutch chambers in 1869 by the colonial department contains some details on the agrarian constitution of the different parts of the island[2].

In the provinces of Bantam, Krawang and Preanger, the woods and waste lands are common; but the arable land is private property, and is sold, devised, mortgaged, or devolves by succession. There is no annual partition. Ancient registers exist containing the names of the proprietors and the description of their property: they are a sort of primitive cadastre[3]. Any one who reclaims a part of the common land becomes the owner of it.

In the provinces of Cheribon and Tagal private property and collective property exist side by side. The *sawahs jassas,* or cleared lands, belong to him who has brought them into cultivation, and are transmitted by succession as long as they continue to be cultivated. Collective property, however, is gradually absorbing private property, because the communal authorities find it to their advantage to enlarge the communal domain which they have to divide. They also find in it facilities for furnishing the corvées to the state. Thus, in the district of Talaga, out of 8,884 *bouws,* only 43 are known as *sawahs jassas,* or private hereditary property.

In Samarang all property is held in common. There are no *sawahs jassas.* Any one who reclaims waste land has merely the enjoyment of it for three years. After this time the *sawah* returns to the domain, which is subject to the partition effected by the chief or *loerah* every year. In Pekalongan, *sawahs poesakas,* or hereditary property, is the exception. The effect

[1] Interesting hints, however, are to be found in the capital work of Sir Stamford Raffles on Java; in Pierson's book *Het Kultuurstelsel;* in *Java,* by J. W. Money; in the numerous publications of M. van Woudrichem van Vliet on the colonial system, and in an article by M. Sollewyn Gelpke, in the Dutch Review *De Gids,* Jan. 1874.

[2] Session 1868, 9, no. 126. *Grondbezit op Java, inzonderheid in verband met art.* 14, *van het indisch Staatsblad,* 1819, *no.* 5.

[3] [An official statement of the quantity and value of realty made for purposes of taxation.]

of the *corvées* demanded by the state, for the furnishing of which each village is jointly liable, is to favour putting land in community, like the joint-responsibility for taxes in Russia.

In Japara, 8,701 *bouws*, in the hands of 7,454 proprietors, are found existing by the side of village communities. The clearances, which create these small properties, are executed by the richest inhabitants, frequently in combination, as they alone have sufficient means to carry on the works of irrigation, indispensable in the cultivation of rice. But it is reckoned that small properties, newly created, do not remain long in the hands of their proprietors. Fifty years, on an average, sees them united to the collective domain. If a proprietor leaves the *dessa* his property goes to the commune. And it is the same if he ceases to cultivate it, if he has no direct heirs, or if he fails to pay his contribution.

In Rembang, out of 158,425 *bouws* of arable land, 48,185 *bouws* were found subject to private ownership, which was acquired over half of them by right of clearance, and over the other half by succession or purchase.

In the majority of *dessas* the partition is executed annually. In some villages it only takes place every five years; in others, from time to time, as the number of families increases. Those who have draught beasts receive a larger portion.

In the province of Bagelen, the inhabitants of the *kampongs*, or villages without arable lands, can sell their houses with the land to whomsoever they wish; but the inhabitants of the *dessas* cannot sell theirs to strangers. The same rule existed in the German mark, and still exists in Russia.

In the provinces of Madioen, Patjitan, Socrabaya, Madoera, Pasoeroean, and Kedirie, all the *sawahs* are common property, and subject to annual partition. Any one who clears a parcel of land in the forest or waste land keeps the individual possession for three or five years. After that time the land returns to the common stock, and is subject to periodic partition. To encourage clearing the Dutch government endeavoured to extend the enjoyment by the person reclaiming land to eighteen years, or even till his death; but the *adat*, or custom, in many cases prevailed. As the sentiment of private ownership in the

soil is not yet awakened, collectivity very quickly absorbs ill-defined and ill-defended individual rights.

The *gogols*, or cultivators entitled to a share in the soil, hold to the periodic partition, because by its means they successively occupy the best lots. Sir Stamford Raffles, the eminent administrator, who governed Java from 1811 to 1816, in the name of England, then mistress of the Dutch Indies, wished to introduce individual property, by assessing the taxes no longer on the commune jointly, but on the cultivators individually, in proportion to the land which they tilled. The latter submitted apparently to the new regulation, and paid the sums exacted; but afterwards made a fresh apportionment of the tax among themselves, conformably to the old custom.

A law of April 3, 1872, systematically regulated the land-tax to be levied on the lands of Java. The lands are divided into ten classes, according to the revenue they return, from 10 to 100 florins; and the tax is levied at twenty per cent. on the registered revenue. The amount of the total contribution to be paid by each *dessa* is made known to the mayor, or *loerah*, who, with the concurrence of the inhabitants, fixes the quota due from each member, on account of the parcels which he possesses, or of which the temporary enjoyment has been allotted to him. The mayor keeps a register of this assessment, and gives an extract from it to all the contributories.

There has been much discussion as to who is the actual owner of the soil in Java. As the native princes seem to have made what disposition they pleased, both of the soil and of the labour of the inhabitants, the Dutch, succeeding to their authority, concluded that they were now the real owners of the soil. In a report of August 31, 1803, a special commission, instituted to inquire into colonial affairs, asserts that the sovereign possesses the sole right of property over the whole territory, and that the Javanese had no conception of the right of property as applied to the soil; but that, this notwithstanding, ancient customs ought to be observed. The regulation of January 27, 1806, does not even mention this last restriction, and the Governor, Daendels, was of opinion that "not only was landed property entirely unknown to the Javanese, but that

from time immemorial they had been accustomed to labour for their princes and chiefs."

When the English became masters of Java they wished to introduce a regular system of taxation; and, accordingly, were induced to inquire into the nature of ownership in the colony. Who were owners of the soil? The cultivators, the State, or the intermediate "Regents," who were very similar to the Zemindars in India? In India, contrary to all justice, the question had been decided in favour of the Zemindars, who were merely functionaries, charged with levying the taxes, reserving a certain deduction for themselves. In Java, Daendels had clearly established the subordinate position of the "Regents." The English could not, therefore, regard them as proprietors of the soil. The Governor, Raffles, recognised the fact that "there existed no right of property between that of the sovereign and that of the cultivator[1];" and was of opinion that the eminent domain was vested in the State, just as is allowed to be the case in England by every jurist whose opinion has any authority[2].

Raffles wanted to give the cultivators a more permanent property in the soil, by granting them the enjoyment of the land in consideration of a fixed rent. The cultivator, it is true, would be the tenant of the Government, but would have a kind of usufruct,—a lease, in fact; and the rent, which he would have to pay the State, would be nothing, one may say, but a land-tax. The lease, however, could in the first instance only be granted for a year, because of the difficulty of determining fairly the rent to be paid by the cultivator (*Revenue Instructions*, Feb. 11, 1814).

When the Dutch government recovered possession of Java, it did not express in any precise terms in what aspect it regarded the *dominium*, which Raffles had attributed to the State. J. Van den Bosch, the governor, expresses himself on the subject in the following terms: "The right of the sovereign

[1] Raffles, *History of Java*, I. p. 136.

[2] Blackstone says on this point: "This allodial property no subject in England has, it being a received and now undeniable principle in the law, that all the lands in England are holden mediately or immediately of the crown. The sovereign, therefore, only hath *absolutum et directum dominium*."

is confined to levying a portion of the produce of the soil, which belongs to him in accordance with the *adat* or custom, or else in exacting a certain amount of labour as an equivalent. In other respects lands are transmitted by sale or succession, according to the principles of the *adat*."

In 1849 the Dutch government submitted to the chambers a proposed law authorising the sale of lands in Java. The impost, paid by the natives, is here spoken of as "a rent received by the state for the letting of lands belonging to it." A representative, Baron Sloet tot Oldhuis, vigorously attacked these expressions and the idea which they embodied; and, from that time, official documents have avoided using any terms which might seem to attribute to the State the civil right of property over the cultivated land.

This right was not, however, recognised any more fully in the cultivators. It seems that all that they are recognised as having, is a usufructuary enjoyment, an *emphyteusis* or hereditary lease (*erfpacht*). The state renounced the right of arbitrarily taking from the cultivators the soil which they tilled, but did not give up the eminent domain; and, at the same time, claimed the right of disposing absolutely of unoccupied lands, whether by cultivating them immediately, by selling them, or by granting them on lease. In several parts of the colony, however, lands and houses are inscribed in the registers of the *cadastre* as the private property of the Javanese[1].

Under the British rule lands were sold to Europeans. But since Holland has recovered possession of the colony, they have only been granted leases for terms of greater or less duration, frequently of twenty-five years. The governor, Du Bus, thought that land should not be sold, for two reasons:—first, to avoid introducing a principle borrowed from Europe, into the midst of a totally different system; and secondly, to enable the leaseholder to expend in reclaiming the ground what he would have had to employ as purchase-money. The government retained this system; and, under the new law, grants leases (*erfpacht*) for seventy-five years, with exemption from

[1] See the note presented to the Dutch Chambers in session of 1865—6, *Vaststelling der Gronden, waarop ondernemingen, landbouw en nyverheid in nederlandsch Indie kunnen worden gevestigd.—Memorie van toelichting.*

land-tax during the first seven years, and of half the tax from then till the twelfth year.

This seems to be an excellent system, and very superior to that of perpetual grants, generally practised in English colonies, in Australia and America. A lease of seventy-five years is sufficiently long for the lessee to execute all the works of cultivation which a proprietor would perform. On this point there can be no doubt, when we see magnificent buildings in England erected on lands leased for sixty or seventy years. The immense works of art required for the construction of a railway incomparably surpass those which must be executed to bring the productiveness of the soil to its highest pitch; and yet the millions necessary for these gigantic enterprises are never wanting. In Java, many lands have been cultivated at great expense, notably in the Residences of Cheribon, Tagal, Samarang, and Banjoemas, even with leases of twenty-five years. It is by these means, especially, that tea plantations have been formed: and they have been so well worked, that, at the expiration of the term, the lands could be re-let for an annual rent of 80, 100, and 130 francs the hectare[1].

The lease has a great advantage over perpetual grants, inasmuch as at the expiration of the term the land returns to the state, which disposes of it again, to the profit of all. The revenue arising from the soil is the taxation. All the income can be applied to purposes of general interest, instead of being employed to satisfy the fancies of a few wealthy families. It is an actual realization of the system, advocated by the "physiocrats," of a single tax on land.

During the session of 1866—7, a member of the Chamber of Representatives in Holland expounded the position of property in Java, according to Asiatic and Mahommedan ideas, in terms which it may be useful to summarize here:—"The soil belongs to the creator, God, and, in consequence, to his earthly

[1] In 1856 the tea-plantations in the domain of Djatienangar and of Tjikadjang were let to Baron Band for a rent of 50 florins the *bouw* of 71 *ares*. The government tea-plantations at Lodok, in the presidency of Bagelen, are let at from 45 to 32 florins the *bouw*.—See *Memorie van toelichting*, quoted above.

[The *hectare* is about 2½ acres, and the *are* about 4 perches.]

representative, the Sovereign. The enjoyment of the soil is granted to the commune in general, and in particular to him who has reclaimed it, for such time as he or his descendants observe the conditions determined by the *adat*, or custom. If he ceases to fulfil them, the right of enjoyment reverts to the community, the *dessa*. If the soil has been reclaimed by the combined efforts of all, it is on the same principle common to all. This common territory is divided annually among the members of the *dessa*. In making the allotment, regard is paid to the quality of the different parcels, and to the working strength and the number of draught beasts which each family has at its disposition, and also to rules consecrated by custom. A portion of the common domain is reserved for the chiefs and priests; but they are bound to support, out of the produce of this portion, the mosque (*mesdjid*), the sick and the aged. In certain districts it is the priests' duty to superintend the canals and the whole system of irrigation. Certain lands are an appanage of the sovereign for his support: these he may not alienate. The whole soil is granted out by him to tenants, a certain rent being reserved in kind or in labour. The families, which have more land than they can cultivate, keep labourers, *menoempangs*, who are their servants and form part of the domestic circle. When the communal domain is enlarged by new clearances, or when lots fall vacant, the *menoempangs* receive a share in turn.

"This agrarian system is in close harmony with the mode of cultivation. Rice, which forms the staple food of the Javanese, requires a general system of irrigation, which is impossible without association, and which leads to cultivation in common. The system really establishes a kind of communism, but it secures to the cultivators their chief means of subsistence; and, as they cannot alienate their right of enjoyment, they are preserved from pauperism.

"If the Javanese wishes to increase his comfort or his income, he can do so by obtaining a second crop, of which the cultivation is entirely free and independent."

At different times the Dutch chambers have discussed the question of introducing in Java individual property, by promoting the partition of the common domain of the *dessa*

among the inhabitants. The partizans of this measure pointed to the example of Europe. The village communities to be found in Java, they said, are not peculiar to Asia: they existed formerly in the majority of European countries, where they were met with in the form of the *mark*. The same customs, which are still observed in the *dessas* of Java, were formerly in force in the Slavonic and Germanic *marks*. Agricultural processes have been improved, and agricultural produce has increased in proportion as individual property has replaced common ownership in Europe. Why should not the same be the case in Java? Property is the best stimulus of labour; for it gives full efficiency to the essential principle of responsibility. Besides, the system of collective possession of the soil cannot be maintained indefinitely. The population increases annually by from 300,000 to 400,000 heads; and, consequently, the lots assigned to each family are continually diminishing. No doubt there remains much cultivable land as yet unreclaimed. According to Raffles, only one-eighth part of the soil capable of cultivation was occupied; according to other authorities there might be one-fifth or sixth part. In any case, vast spaces remain to be brought under cultivation; but this is only to defer the difficulty without solving the problem. The time must arrive when the partition will only give each holder an inadequate portion. It is, therefore, advisable to provide against this final crisis, by adopting at once individual property, which would be less favourable to the increase of population.

The partizans of the Javanese system of community replied that a blow should not be lightly struck against an agrarian organization, which dates from time immemorial, and is in close harmony with the system of agriculture practised in the country. The proper irrigation of the rice-fields demands works of art: canals to bring the water, and ditches to retain and distribute it. These are objects of common interest, the expenses of which ought to be supported by the whole village. To derive full benefit from the irrigation, the different agricultural operations of planting, weeding, and watering, are executed by common consent; and collective cultivation thus leads naturally to collective ownership.

The Javanese, like all Asiatics, is improvident: he is induced to sacrifice the advantages of a secure position in the future for present enjoyment. Give him property over which he has absolute power of disposition, and he will soon sell it to Chinese speculators, who in a very short time will have accumulated in their hands the whole soil. In the 33,000 *dessas* there are at the present time some two million families of agriculturists having a share in the ownership of the soil. They form the solid basis of society, as being interested in its maintenance; for their life is happy and contented. Once make a definite division of the communal property, and at the end of a certain time a class of proletarians will be formed with nothing to attach them to the social order, which will henceforth be constantly harassed and threatened.

Such are the principal arguments employed in a discussion which is still being carried on.

Hitherto the Dutch government has respected the ancient communal institutions of the colony, and has acted wisely in so doing. No attempt has ever been made to impose on the Javanese the partition of the collective domain; there was only the wish to authorise the inhabitants themselves to decide by the vote of the majority, whether a definite division should be effected, exactly as was done in Holland for the *marks*, which still existed in considerable numbers in that country, at the time of the introduction of the civil code. In Java the communal territory is absolutely inalienable; it is *extra commercium*. Its unimpaired preservation is a matter of public interest. Hence it results that even a majority can strike no blow against it. It is the inheritance of future generations, and those of the present may not dispose of it at their will. Persons well acquainted with the manners and ideas of the Javanese assert, that a law, which authorised partition, would remain a dead letter: and that in no *dessa* could a majority be found to attack this primordial institution, which they venerate as much as the *adat* or custom itself[1].

[1] Cases, however, are quoted in which villages have renounced periodic partition. M. Kinder de Camarecq, formerly resident in Java, mentions a *dessa* in the country of Kadoe, where the cultivators have introduced a new system of landed property more like the principle of allodial property than that

Opinions differ as to the origin of village communities in Java. Some writers trace it to the conquest and to Mussulman laws: while others maintain that they come from India. The latter opinion is probably the correct one. The same institutions existed, as a matter of fact, in India; it is to this country that Java owes all its ancient civilization; and, moreover, those districts of the island, where Hindoo influence has been strongest, are the parts where the system of village communities is most general. Yet, community of the soil being the system natural to primitive peoples, it was probably already in existence before the influence of Indian institutions made itself felt.

In Java the collective system seems favourable to the increase of population, although the case is quite otherwise in Russia. In Java, the number of inhabitants increases more rapidly than in any other country in the world, owing to the excess of the births over the deaths, a very exceptional fact in the tropics. The population amounted in 1780 to 2,029,500 souls; in 1808 to 3,730,000; in 1826 to 5,400,000; in 1863 to 13,649,680; and finally, in 1872, to 17,298,200. It is estimated as doubling itself in thirty years. In the United States this requires twenty-five years, but immigration there contributes a considerable contingent. The effect of this increase of population is to reduce the share of each cultivator in the periodic partition of lands. M. W. Bergsma recently drew an alarming picture of the situation in this respect[1]. In certain regions, he tells us, the peasant only obtains the third or fourth part of a *bouw*, or from 1½ to 2½ roods. The cultivators say they have no more than the half or quarter of the *sawahs*, which their fathers tilled. They even ask that the government should forbid subdivision into parcels smaller than a half *bouw*.

of communal property. (See *Tydschrift voor Indische taal- land- en volkenkunde*, x. 290.) In other districts, especially in the provinces of Madura and Cheribon, the system of collective property has been recently introduced or generalized. In Manilla, in the cultivated parts of the island, the system of individual property has supplanted collective property, but there remain numerous traces of the old agrarian organization.—See J. Wiselius, *Een bezoet aan Manila*, La Hague, 1875.

[1] See *Revue Javanaise: Tydschrift van het Indisch landbouw-genootschap*, 1873, no. 3. *Landbouw-wetgeving.*

The principal merit attributed to the periodic partition is that it prevents a proletariat. Whereas, M. Bergsma asserts, the system will soon result in converting all the Javanese into a people of proletarians. There will still be equality; but it will be equality in misery. Dutch conservatives, and even moderate liberals, such as M. Thorbecke, have always defended the system of collective possession, as did conservatives of the shade of M. de Haxthausen in Russia. They are opposed to the introduction of private ownership, borrowed from the West. The reformers, on the contrary, maintain that they should at once put into force in Java the laws which regulate landed property in Europe, because the economic advantage thereof will be the same there as here.

In Java, as in Russia, this collective system is favourable to colonization. Several families leave their native village to found a new community. For this purpose, they construct a system of irrigation by means of labour carried on in common. The water having been brought by the co-operation of all, it follows that the *sawahs*, or rice-fields, so fertilized, become the undivided property of the communal group. It is a kind of partnership. To encourage individual clearances, enjoyment for life or for a long term, thirty or forty years for instance, as in the case of a railway concession, must be guaranteed.

In India the primitive community of Java and Russia no longer exists, except in the most retired and least known parts of the country. According to Sir Henry Maine, one of the causes which has made collective ownership of the soil disappear here, is that pasturage plays a less important part in the rural economy than in Europe, and that the use of meat as an article of food is almost entirely excluded. The Slavonic and Germanic races maintained numerous herds on large undivided pastures: and this common tenure, which has survived in many countries to our own times, even after the arable land has become private property, formed the basis of village communities. In India, where there were fewer herds and less pasture, undivided co-operative cultivation had less ground of existence.

Nearchus, however, the lieutenant of Alexander, writing in the fourth century before Christ, tells us that in certain coun-

tries of India the lands were cultivated in common by the tribes, who, at the end of the year, divided the crops and produce among their members[1]. We see in Elphinstone that these communities survived till a period very near to our own[2], and they exist even now in some remote parts of the country.

Although the periodic partition of lands has generally gone out of use, most of the other characteristics of the ancient institution have been preserved. I have no hesitation, says Sir H. Maine, in asserting that, in spite of certain differences, the mode of occupation and cultivation among peasants, grouped together in village communities, is the same in India as in primitive Europe. The English did not at first notice or understand these communities. Although the laws of Manu mention them, the Brahminic code of the Hindoos, which the English jurists first examined, was not sufficient to throw light on institutions and customs so different from those of modern Europe. It is only quite recently that they have appreciated the importance of this ancient organization, even for present purposes of administration.

In its relations with the state, the village is regarded as a jointly responsible corporation. The state looks to this corporation for the assessment and levying of imposts, and not to the individual contributor. Sir George Campbell relates that there are villages in the presidency of Madras, which have for half a century apparently submitted to the system of individual taxation, but which really pay the impost in a lump, and afterwards allot the payment according to their special mode of division[3]. The village owns the forest and uncultivated land, as undivided property, in which all the inhabitants have a right of enjoyment. As a rule, the arable land is no longer common property, as in Java or in Germany in the days of Tacitus. The lots belong to the families[4] in private ownership, but they have

[1] Strabo, l. xv. c. I. 66.

[2] Mountstuart Elphinstone, *History of India*, 5th Edition, pp. 71—72, 263.

[3] *Tenure of Land in India*, in *Systems of Land Tenure in various Countries*, published by the Cobden Club in 1870.

[4] Sir H. Maine, however, tells us that, in the central provinces, "there are examples of the occasional removal of the entire arable mark from one part of the village domain to another, and of the periodical redistribution of lots

to be cultivated according to certain traditional rules which are binding on all.

In some remote regions the most archaic form of community is to be found, of which ancient authors make such frequent mention. The land is cultivated in common, and the produce divided among all the inhabitants. At the present time, however, collectivity no longer exists generally, except in the *joint-family*. This family community still exists almost everywhere, with the same features as the *zadruga* of the Southern Slavs, which we shall describe at length presently.

Each family is governed by a patriarch, exercising despotic authority. The village is administered by a chief, sometimes elected, sometimes hereditary. In villages where the ancient customs have been maintained, the authority belongs to a council, which is regarded as representing the inhabitants. The most necessary trades, such as those of the smith, the currier, the shoemaker, the functions of the priest and the accountant, devolve hereditarily in certain families, who have a portion of land allotted them by way of fee. The soldiers of the *in-delta* in Sweden receive, in a similar manner, a field and house for their support. In England, there are numerous traces[1] to shew that a custom formerly existed there exactly similar to that practised

within the cultivated area. There is no information of any systematic removal, and still less of any periodical re-partition of the cultivated lands, when the cultivators are of Aryan origin. But...though the practice of redistribution may be extinct, the tradition of such a practice often remains, and the disuse of it is sometimes complained of as a grievance. If English influence has had anything to do with arresting customs of repartition, which are, no doubt, quite alien to English administrative ideas, it is a fresh example of destructive influence, unwillingly and unconsciously exercised....The probability, however, is that the causes have had their operation much hastened by the English, but have not been created by them."

[1] In an article in the *Contemporary Review*, May, 1872, *On Village Communities*, M. Nasse mentions, on the authority of Mr Williams' *Archæologia*, a manor, in which the meadows, divided into parts or *hams*, were annually allotted among the inhabitants. Of these parts, one was called *the Smith's ham;* another *the Steward's ham;* and another *the Constable's ham.* The old English register, the *Boldan Book*, dating from 1183, speaks of craftsmen and indicates the portion of land they received for their services;—thus *N. N. faber tenet 6 acras pro servitio suo.* There is the same custom in Java and in India. See art. *De Gids* already quoted, and Maine's *Village Communities.*

in India, a remarkable instance of the persistency of certain institutions in spite of time and national migrations.

This intimate association which forms the Hindoo village rests even at the present day on family sentiment; for the tradition, or, at least the idea, prevails among the inhabitants of descent from a common ancestor: hence arises the very general prohibition against land being sold to a stranger. Although private property is now recognized, the village, in its corporate capacity, still retains a sort of eminent domain. Testamentary disposition was not in use among the Hindoos any more than among the Germans or the Celts. In a system of community there was no place for succession or for legacies. When, in later times, individual property was introduced, the transmission of property was regulated by custom.

As Sir H. Maine remarks, in the natural association of the primitive village, economical and juridical relations are much simpler than in the social condition, of which a picture has been preserved to us in the old Roman law and the law of the Twelve Tables. Land is neither sold, leased, nor devised. Contracts are almost entirely unknown. The loan of money for interest has not even been thought of. Commodities only are the subject of ordinary transaction, and in these the great economic law of supply and demand has little room for action. Competition is unknown, and prices are determined by custom. The rule, universal with us, of selling in the dearest market possible and buying in the cheapest, cannot even be understood. Every village and almost every family is self-sufficient. Produce hardly takes the form of merchandise destined for exchange, except when sent to the sovereign as taxes or rent[1]. Human existence almost resembles that of the vegetable world, it is so simple and regular.

In the *dessa* of Java, and in the Russian *mir*, we can grasp, in living form, civilization in its earliest stage, when the agricultural system takes the place of the nomadic and pastoral system. The Hindoo village has already abandoned commu-

[1] See an excellent sketch of the Hindoo village in Karl Marx' *Das Capital*, 1873, p. 370. Cf. also Lieut.-Col. Mark Wills' *Historical Sketches of the South of India*, London, 1810, Vol. I. p. 118; and Sir George Campbell's *Modern India.*

nity, but it still retains numerous traces of it. We must now shew that European nations have started from the same point and passed through the same phases of development. We shall thus see, that in spite of diversity in external events, certain fundamental laws have in all cases presided over the economic evolution of human societies.

CHAPTER V.

THE ALLMENDS OF SWITZERLAND[1].

In the primitive cantons of Switzerland, institutions of the most democratic character conceivable have secured the inhabitants from the most remote times in the enjoyment of liberty, equality and order, and as great a degree of happiness as is compatible with human destinies. This exceptional good fortune is attributable to the fact, that ancient communal institutions have been preserved, and with them the primitive communal ownership.

The French revolution committed the error, every day more apparent, of endeavouring to found democracy by crushing the

[1] The materials for this chapter were collected with the greatest difficulty. A visit to the villages of Berne, Oberland, and the borders of the lake of the Four Cantons, was of no use to form a general view of the subject, as the customs were everywhere different. A few Swiss publications were of use; but England, France and Germany afford no information. Maurer and Roscher, generally so exhaustive of all that concerns ancient agrarian customs, say hardly anything of the Swiss *Allmenden*. Professor Nasse, who has much information on this subject, thinks German economists have paid no special attention to it. The chief sources used in the chapter are:—1. A collection of regulations for the *Allmenden* of the Schwytz canton. 2. A complete study on communal property in Unterwald, *Die Rechtsverhältnisse am Gemeinland in Unterwalden*, by Andreas Heusler, professor of law at Basle. 3. A pamphlet full of original and sound views, by Doctor B. Becker, pastor at Linthal, in the canton of Glaris, *Die Allmeinde, das Grundstück zur Lösung der socialen Frage*. 4. A study of Professor de Wyss, *Die Schweizerische Landsgemeinden*, in the *Zeitschrift für Schweiz. Recht*, 1 Bd. 5. Snell's book, *Handbuch der Schweiz*, Zurich 1844. 6. *Das Landbuch von Schwyz, herausgegeben* von Kothing, Zurich 1850. 7. *Das Landbuch oder Sammlung der Gesetze des Cantons Uri*, Flüelen 1823. 8. Private information, due to Professor König of Berne, and M. Schenk, chief of the federal department of the interior.

only institutions which can make it possible. It set up abstract man, the isolated individual, and theoretically recognized in him all his natural rights, but at the same time annihilated everything that could attach him to preceding generations, or to his existing fellow-citizens,—the province with its traditional liberties, the commune with its undivided property, and the crafts and corporations, which united in a bond of brotherhood workmen of the same trade. These associations, the natural extension of the family, had sheltered the individual: though perhaps sometimes a fetter, they were always a support; while binding men down, they also strengthened them; they were the hive in which individual life was carried on. In times of adversity there was a guarantee of assistance; in ordinary times, a supervision which kept men in the right path, a power of defence when their rights were attacked, and a tradition for new generations. The present was connected with the past by the privileges and advantages derived from the institution.

In modern days the individual is lost within the nation, an abstract idea which is only realized for most of us under the form of the receiver who demands the taxes, or the conscription which imposes military service. The commune has lost all local autonomy, and is become a mere wheel in the machinery of administration, obedient to a central power. Communal property in almost every case has been sold or diminished. Man, coming into the world with wants to be satisfied, and with hands to labour, can claim no share in the soil for the exercise of his energy. Industrial crafts are no more: the joint-stock companies which have taken their place are a means of associating capital not men. Religion, a powerful bond of union, has lost most of its fraternal power; and the family, shaken to the foundation, is little more than a system of succession. Man is a social creature; and the institutions have been destroyed or weakened in which his sociability could express itself and form a solid basis for the state.

Attempts are made, now-a-days, to fill in the blank made by the centralization of the primitive system and the Revolution, by founding trades' unions: but these have no feeling of brotherhood or religion, no tradition and no juridical principles; too often they are merely aggressive associations for

maintaining a struggle with the capitalists. At the risk of being thought "reactionary," the author has no hesitation in asserting that two institutions formerly existed, which should have been preserved and improved as the foundation of modern democracy,—viz. communal autonomy, and communal property. Politicians have striven to destroy the former, and economists to banish the latter; but it is an immense mistake, and will everywhere hinder the establishment of democratic institutions, at any rate until a remedy is devised.

If in any country these institutions have been preserved, and, at the same time, liberty, equality and order have been maintained for centuries, we are induced to think that these facts are connected as cause and effect; and it may be useful to study under what conditions the country has enjoyed these rare advantages. The remarkable point is that these institutions existed among all nations originally; but in almost every case they have been destroyed or radically modified with the lapse of time. In Russia alone the property of the commune has been preserved, although the nobility, created in the sixteenth century, deprived it of half its possessions, and reduced the inhabitants to serfage. In France feudalism depressed the communes, but did not destroy them; it was reserved for royal despotism and the subsequent passion for uniformity at the time of the French revolution, to deal their death-blow. In Germany the commune was mutilated by the nobility and by administrative centralization. In England, by a strange contrast, while the towns preserved all their liberties and obtained a voice in the Lower House, the rural commune was consumed by the manor, so that no vestige remains, except in the ecclesiastical element, the vestry or parish. Hence arose the profound degradation of the agricultural labourer, who is only now awakening to enter on a struggle with his employers.

There has never been a more radical democracy than that which has existed for a thousand years in Switzerland; its application in a more absolute form cannot even be conceived. In the cantons of Uri, Schwytz, Glaris, in the Appenzells, and in the two Unterwaldens, the people govern themselves directly, without any intermediate representative body. In the

spring, all the citizens of full age meet in a single assembly, in the open air, to pass laws and to nominate the officers charged with their execution. This is the old "May Field" of the Germans, where all the warriors assembled in arms, and expressed their decision by the *wapentak*, or clash of arms. To the present day, the inhabitants of the outer Rhodes[1] of Appenzell come to the general assembly, one year at Hundwyl and the other at Trogen, each carrying in his hand an old sword or ancient rapier of the middle ages, which forms a quaint contrast with their black clothes and family umbrella. These assemblies are called *landesgemeinde*, that is "national commune," a strictly precise term, implying that the whole country forms, so to say, a single commune. This was the case originally. Historical documents shew us, in the early part of the middle ages, German tribes occupying, one the territory of Unterwalden, another that of Uri, and the third that of Schwytz, as undivided *marks*. Later, as different villages were formed, they constituted separate autonomic communes; but the great commune of the canton with the general assembly of all the inhabitants, the *landesgemeinde*, was maintained. We find, therefore, a form of government perfectly free and democratic. This absolute self-government, dating from the most remote times, has been transmitted uninterruptedly to the present day. Nations did not start with patriarchal royalty, as has often been asserted from an exclusive study of heroic Greece, but rather with republican institutions. Madame de Stael was right. Liberty is ancient, despotism modern.

Direct government, which Rousseau considered no longer possible, can subsist in the primitive cantons, partly because

[1] The canton of Appenzell is divided into two halves, the Inner and Outer Rhodes. The word *Rhoden* denotes a very ancient and curious institution. Each *Rhode* is made up of a group of a certain number of inhabitants more or less scattered throughout the villages, who assemble to choose deputies for the two councils and to administer certain collective property. The *Rhode* therefore corresponds to the clan, except that this kind of political corporation is not attached to a fixed portion of territory. The institution, which has certain analogies with the Roman *gens*, dates from the highest antiquity. For the *Landesgemeinde*, see an excellent article by M. Rambert in the *Revue Suisse* (1873), and the Studies of Mr Freeman on the primitive forms of political organization.

the territory is very small, and also because the duties of legislation are reduced to a very small compass. Most kinds of business are carried on in the commune. Foreign relations are the province of the confederation. The manner of life is simple, and custom still exercises a considerable empire. Accordingly there are but few laws to be made. The *landamman* presents them to the assembly, every citizen having the right of initiative or amendment. The discussions are at times very animated, and even violent; but an early division is demanded, as every one is anxious to get home again. The abuse of parliamentarianism, the peculiar curse of States governed on the representative system, is thus avoided.

Almost everywhere deliberative assemblies remain too long together: they irritate and weary the country; sometimes communicating to it the passions by which they are themselves animated, and sometimes arousing an extreme movement in opposition when they have ceased to represent public opinion. When the assemblies are prorogued, the country is at rest, and devotes itself to business, to art, literature, industry or commerce. Scarcely, however, have parliamentary discussions recommenced when everything is once more called in question: exasperated parties are at issue; and the government, compelled to devote its whole power in warding off the attacks of its adversaries, has no time to consider questions of general interest. The passions of the nation are aroused over contests in which a portfolio is the prize. The parliamentary system thus degenerates into contests of intrigue in the chambers, and contests of influence, too often corrupt, in the elections. America, Germany, and England have been preserved from the abuse of parliamentarianism, which, in France and Italy, has become an absolute cause of disorder. The best means of escaping it is to reduce the functions of the central power by extending those of local powers,—of the province, that is to say, and the commune.

In Switzerland, the communes enjoy almost absolute autonomy. They not only frame their own regulations, but even their own constitution, so long as it is not contrary to the laws of the State. They administer independently everything relating to their schools, churches, to the police, the roads, and the

care of the poor. They have free power of nominating all their officers, and of fixing their local taxation. The State only meddles with the communal administration so far as to preserve the hereditary patrimony of the commune from destruction, and to prevent the violation of general laws. The interference of the central power is rather greater in certain cantons, such as Fribourg, Geneva and Berne; in others, such as Appenzell and the Grisons, it is reduced to nearly nothing. The State is only a federation of independent communes, which existed before its birth, and can live without it. The central power exercises no administrative control over the local authorities; the violation of a general law is the only ground for its interference. It can only reach the citizens through the medium of the communes; and it is the latter which vote the taxes and pass the laws, the establishment of which belongs to the people, in virtue of the Constitution. Decentralization here is excessive. Communal federalism pushed to this extreme degree takes away all consistency from the State, and reduces the nation to dust. As Tocqueville has demonstrated, the superiority of the United States' constitution consists in the fact, that, while the independence of the federated states is respected, the central power, for the duties which it has reserved towards itself, addresses the citizens directly, by means of its own agents, nominated and distributed by itself[1].

[1] The organization of society in Barbary, as described in the works of MM. Hanoteau and Letourneux, of which there is an admirable *résumé* by M. Ernest Renan in the *Revue des Deux Mondes*, Sept. 1, 1873, is identical with that of the Germanic *mark* and the Swiss democracies. The government is direct: the people self-administering. The supreme authority is the general assembly of citizens or *djemaa*, which exercises alike legislative, executive and judicial power. It nominates a mayor (*Amin*), who is nothing but the Swiss *amman*. Landed property is no longer common, as in the primitive *mark*; but the community still binds private property in very close fetters. The latter owes to the poor the *thimecheret*, or distribution of meat. Hospitality is a common charge of the *djemaa*, as it was of the *mark*. A Kabyle has a right to demand the assistance of the whole village for the construction of his house. Agricultural works are also carried on by the aid of mutual assistance. Every one in need claims help of the village and is in turn liable to a similar claim. The result of this organization, based on such strict principles of joint responsibility, is, as M. Renan remarks, to hinder the development of wealth,

The reason that the republican system is so firmly established in Switzerland is, that it has its roots in minute districts. If for centuries it has been a guarantee alike of order and liberty, this is due to the fact that, most matters of public interest being decided in the commune, the changes, which elections bring about in the composition of the government, exercise only a secondary influence. It is impossible to found a republic, as has been attempted in France, by maintaining a centralization, which leaves in the hands of an assembly or a president the power of deciding everything. A civilized country can never tolerate a system, which, at every general election, and at every renewing of the executive power, once more calls into question the whole political and social organization. If all the organs of national sovereignty are to be elective, some limit must be put on their authority, and some restraint on the functions of the central power. In the United States, as in Switzerland, the commune, or township, is the principal focus of political and administrative life. In the township most of the common interests are managed. The State is composed of a union of independent and autonomic townships, just as living creatures are made up of an infinite number of connected cells, each of which is endowed with individual activity.

The characteristic distinguishing the Swiss commune from the American commune, and imparting to it a much greater importance, is that it is not merely a political and administrative institution; it is also an economical institution. It does not simply give its members abstract rights; it procures them also in some measure the means of existence. As elsewhere, it supplies the expenses of the school, the church, the police and the roads; but more than this, it secures to its

but at the same time to throw an obstacle in the way of the formation of a social residuum, destined to misery by a fatal decree. The similarity between the *djemaa* of Barbary and the Swiss *landesgemeinde* is an additional evidence that everywhere human societies were originally constituted in the same way. We may therefore assert that the democratic and autonomic commune is the *natural* form of society. The superiority of the Swiss communes is due to their having, under the influence of the sentiment of Christian brotherhood, arrived at federation, whereas the *djemaas* have remained in a state of war with one another.

members the enjoyment of property, the essential condition of true liberty and independence. This curious aspect of the primitive Swiss communal organization we will endeavour to describe.

We have seen how, in all nations, by a slow and universally similar evolution, the commune and property were developed in the *mark*. The *mark* we have seen was the common domain of the clan. Under the pastoral system, the enjoyment of the pasturage and forest was undivided. Each patriarchal family cut the wood necessary for its wants, hunted its game in the forest, and sent its cattle on to the pasture land.

On the introduction of agriculture, the enjoyment of the portion of the *mark* brought under cultivation ceased to be undivided: it became individual property, but only temporary property, for the space of a life at most. There was only a *usufruct; a jus possessionis,* similar to that which the Roman citizen exercised over the *Ager Publicus;* the *dominium,* the eminent domain continued to belong to the tribe. This change in the mode of enjoyment was the necessary consequence of the change from the pastoral to the agricultural system. The cultivation of grain requires labour, manure, and the application of a certain outlay to the soil: this work cannot be properly carried out, unless he who executes it is sure of reaping the fruit of his outlay. Hence the necessity of individual occupation. On the other hand, as an equal right to live by his labour was recognized in every head of a family, a new allotment had to be made from time to time, that every one alike might be put in possession of the part which fell to him. Thus the clan retained a sort of eminent domain, and periodically effected a new partition of the soil. As we have seen, this primitive organization of the *mark* has been perpetuated in several countries, particularly Java, and Russia. Elsewhere, a few families, attaining greater power, retained their portion, which has been transmitted by hereditary descent. So private property, the type of which we must seek in the quiritary ownership of the Romans, came into existence.

Among nations of German origin, or in countries conquered by the Germans, the feudal system made gradual encroach-

ments on the *mark*. In England, where, in consequence of the Norman conquest, feudalism was organized more completely and systematically than anywhere else, the manor finally absorbed the forest and pasture-land of the communes. The cultivated lands, tilled by the peasants, were soon released from periodic partition. Hence there remain hardly any traces of the primitive *mark* in England. The complete and absolute *dominium* of the Roman law, however, has never been recognized. In strict law, the English soil, conquered by William, and distributed by him to his vassals, still belongs to the Sovereign. The possessors of it are mere tenants of the Crown[1].

In France the peasants, remaining for a long time associated in family groups, succeeded in preserving their communal property. This property, however, attacked as it is by economists, broken in upon by laws of compulsory partition, and always badly managed, hardly yields anything. The use of it is badly regulated, and it only survives as a relic of the past, in strong contrast with the existing agrarian economy. In Switzerland the case is quite otherwise. In the high valleys feudalism was not introduced till late; it never attained to much power, and before the end of the middle ages it had completely disappeared. The democratic institutions of the primitive *mark* were therefore maintained in all their vigour. Although private property has by degrees spread considerably, communal property has not disappeared. Under regulations, continually increasing in precision, it has followed a regular juridical development, and still plays a very important part in the economic life of the Alpine cantons.

The lands of the communes in Switzerland are called *Allmenden*, which seems to signify that they are the common domain of all. In a restricted sense, the name *Allmend* is applied to that portion of the undivided domain, situated near the village, which is devoted to agriculture.

[1] This principle is laid down by Blackstone and all English jurists. Williams, in his treatise *On Real Property*, says: "The first thing the student has to do is to get rid of the idea of an absolute ownership. Such an idea is quite unknown to the English law. No man is in law the absolute owner of lands. He can only hold an estate in them."

The common territory consists of three distinct portions—forest, meadow, and cultivated land—*Wald, Weide und Feld.* Certain villages, such as those in the cantons of Zug and Schwytz, where there are marshy plateaus, possess besides lands where rushes are cut for litter (*Riethern*), and others where turf is cut for firing (*Torfplaetze*). Commonable land is not there, as with us, a bare waste, or sterile heath, pasturing a few miserable sheep, and presenting a picture of neglect and desolation. It is a domain managed according to strict rules dictated by the requirements of systematic agriculture. All the inhabitants regularly take part in its management, and the produce is as great as on private domains, for the cultivated land of the *allmend* will let at 250 or 300 francs the *hectare.* This domain provides those, who are entitled to the use of it, with the means of satisfying the first wants of life. It supplies turf or wood for firing, timber for the construction or repairing of the châlet, and the construction of household articles, tools or agricultural implements—in a word lodging and furniture; a summer pasturage for the sheep and cows, which yield milk, butter, meat and wool—or animal food and clothing; and finally a plot of cultivated land, yielding corn, potatoes and vegetables.

In many villages the portion of cultivated land which falls to each family is abundantly manured and used as a kitchen garden: it is sufficient to contribute largely to the vegetable portion of the food supply. At Stanz every occupier is entitled to 1,400 *klafter*, which amount to 45 *ares*, or more than an English acre. In the canton of Saint-Gall the village of Buchs allows each of the cultivators 1,500 *klafter* or about half a *hectare* of excellent land, as well as firewood for the whole year, and *alp* for a considerable head of cattle; and besides this, it derives from its communal property a revenue sufficient to support the schoolmaster and pastor, and to meet all public expenses without imposing any tax. At Wartau, also in the Oberland of Saint-Gall, every occupier receives 2,500 *klafter* or 80 *ares* in usufruct.

Mere habitation within the commune, or even the exercise of political membership, is not sufficient to constitute a title to the enjoyment of the communal domain; descent from a family, which has possessed the right from time immemorial, or at

least from before the commencement of the present century, being necessary. Collective succession is based on succession in the family, that is to say, descent in a privileged family gives the right to a share in the collective inheritance. In theory it is the association of descendants of the original occupants of the *mark* continuing to enjoy what remains of its domain. Thus, in the same village, side by side with a group of persons using the commonable land, may be found inhabitants excluded from all the advantages which so materially improve the position of the former, and there are thus, as it were, two distinct communes involved one within the other. The *Beisassen*, or simple residents as they are called, have often complained of this distinction, which has given rise to violent struggles between the reformers, who demand equal rights for all, and the conservatives, who endeavour to maintain the old exclusion[1]. Even in those cantons where the most absolutely equal democracy that has ever existed is established, there is ground for a struggle between the spirit of tradition and the spirit of levelling. As there is no general law on the subject, the results of this struggle have not been everywhere the same; but generally arrangements have been adopted securing certain rights to the mere residents, or *Beisassen*. Thus they may

[1] A project was recently submitted to the Grand Council of Berne to facilitate the dissolution of communities and to allow of the realization of their property by the communes. One sees with regret this hostility to a system which should be fostered and cleared of abuses. For the study of this question, constantly under discussion in Switzerland, the following works may be consulted:—

Rüttimann, *Geschichte des Schweiz-Gemeindebürgerrechts*, Zurich, 1862; Leuenberger, *Studien zur bernischen Rechtsgeschichte*, § 28; Stettler, *Versuch einer urkundlich geschichtl. Entwicklung der Gemeinde und Bürgerrechtsverhältnisse im Kt. Bern, in der Zeitschrift für vaterlandisches Recht*, Vol. 111; Wirth, *Beschreibung und Statistik der Schweiz*, Vol. II.; Quiquerez, *Observations sur l'origine et la destination des biens appelés de bourgeoisie dans le Jura bernois;* Blösch, *Betrachtungen über das Gemeindewesen im Kt. Bern und dessen Reform.* Bern 1848; *Gutachten über die Reorganisation des Gemeindewesens im Kt. Bern vom* 9 *Juni* 1851. See also *Vorträge der Direktion des Gemeinde- und Armenwesens über den Rekurs Lammlingen* (*vom* 11. *November* 1872), and the Report of the ninth Congress of the Swiss Juristic Association on the question. *Ist die Aushebung der Bürger- oder Genossengemeinden und die Verwendung des Vermögens derselben zu allgemeinen Gemeindezwecken staatsrechtlich zulässig und nationalökonomisch zu empfehlen?* (*Verf. Obergerichtspräsident Dr Bühler sel. in Luzern.*)

have firewood from the forest, but not timber. They may only send the young cattle, and in some cases one or two milking cows, but no more, on to the *alp*. In the *Allmends* of the plain they are allowed even less: they are often entirely excluded; in some cases they only participate in the drawing of lots for the plots of cultivated land or gardens.

We have but little documentary evidence as to the primitive mode of occupying the *Allmenden*. When the population was very slight in proportion to the territory at its disposal, regulations were hardly necessary. Every one cut what wood he required in the forest, and depastured on the *alp* all the cattle he possessed. It was only later on, when the number of copartners became too large to allow of an unlimited right of user, that the interposition of rules was called for, and they merely sanctioned ancient custom. These regulations became stricter and more precise in proportion as the wants of the community increased. There has thus been a certain juridical evolution; but the fundamental principles of the law have changed as little as the alp itself, or the pastoral economy practised on it. The Swiss *Allmend* thus affords us even now a picture of the primitive life of the ancient inhabitants of the plateaus of the Iran.

The oldest rules of the *Allmend* which have been published date from the fifteenth century. Every community possesses an old chest, or ancient trunk, in which are preserved all the documents relating to the domain of the corporation. Besides the fundamental regulation, which may be called the constitution of the society,—*Einung* or *Genossenordnung*,—this chest contains the judgments deciding any contested point, agreements with neighbouring villages, and the official reports of decisions passed in the ordinary assemblies of May and December. This respect for ancient tradition is a great source of strength in Switzerland; for, as they are more democratic and equal the higher they go back into antiquity, these traditions are exactly in harmony with the requirements of the age which seeks to establish democracy. They have this great advantage over the innovations attempted in the present day, that they have lasted for thousands of years, being maintained and perfected by the free will of men who appreciate their advantages.

This leads us to suppose that they are conformable to natural law, that is, to the wants of human nature.

The mode in which the inhabitants exercise their right in the *Allmend* differs more or less in the several communes. It also varies according to the nature of the property. It is not the same for the *alp*, for the forest, for the turf and the cultivated lands. When the group of habitations in the centre of the *mark* was transformed from a village into a town, it became difficult to maintain the ancient method of enjoyment. Nevertheless, at Berne, the woods are still allotted among the persons entitled. In the industrial town of Saint-Gall each of them receives annually half a fathom of wood and a hundred fagots, or a plot of arable land. The town of Soleure distributes among the occupiers a considerable supply of firewood, varying from five fathoms to a half fathom of beech and fir, according to the class of persons entitled. In many localities the communal lands are let, and the profits applied to defray public expenses. Sometimes there is a surplus, which is apportioned in money; but nearly all the communes which have arable lands allot them among the commoners. There are infinite varieties of detail in the manner of enjoyment of the several communes. The methods can, however, as the Pastor Becker remarks, be classed with sufficient accuracy according to the types afforded by the three cantons of Uri, Valais and Glaris.

Uri is, as seems to be signified by the root of the word, *Ur*, pre-eminently the primitive district. At the present day it forms a single *mark*, without any division into communes. Villages have been formed, Flüelen, Altdorf, Bürglen, Erstfeld, Silenen, Amstäg, Waset, and Andermatt; but except for the care of the power, which is to some extent in their charge, these villages do not form distinct political corporations. They are not true communes; the inhabitant exercises his right of user in any locality to which he may remove. The inhabitant of Silenen may send his cattle into the valley of Schaechenthal, and the inhabitant of this valley may send his on to the alp of the Surènes. In this system there is no other division than that traced by nature itself, which has divided the canton into two distinct parts, the district of Uri, and that of Urseren, separated by the deep gorge of the Schœllenen, bordered on

both sides by perpendicular granite rocks, with the Reuss roaring at the bottom. There are, therefore, as it were, two *marks*, the upper *mark* above the Urner Loch, and the lower *mark* below it.

In the lower *mark*, a great part of the plain has become private property; the woods, *alps* and a few *allmends*, in the neighbourhood of the villages, alone remaining in the primitive community. In the high valley of Urseren, fifteen kilometres in length and two at the most in breadth, the splendid pastures, watered by the Reuss and by the mists of the glaciers, belong to the body of commoners of Urseren.

A touching legend is attached to the method in which the boundary between the *marks* of Uri and Glaris was formerly fixed. The two cantons are separated by frozen peaks and a lofty chain of mountains everywhere except at the Klausen passage, through which one can easily pass from the valley of the Linth to that of the Reuss. In times past, there were disputes and struggles between the people of Uri and Glaris as to the debateable boundary of their pastures. To decide the question, they agreed that, on St George's day, a runner should start at the first cock-crow from the bottom of each valley, and that the frontier should be fixed at the point where they met. The start was to be superintended by inhabitants of Glaris at Altdorf, and by inhabitants of Uri at Glaris. The people of Glaris fed the cock, which was to give the signal to their runner, as much as possible, hoping that, being in full vigour, it would crow early in the morning. The people of Uri, on the contrary, starved their cock; hunger kept it awake, and it gave the signal for the start long before dawn. The runner started from Altdorf, entered the Schaechenthal, crossed the top and began to descend on the other side towards Linth. The Glaris cock crowed so late that their runner met the one from Uri far down the slope on his side. Desperate at the thought of the disgrace which would be reflected on his countrymen, he begged earnestly for a more equitable boundary. "Hearken," answered the other, "I will grant you as much land as you can cross, ascending the mountain with me on your back." The bargain was struck. The Glaris man ascended as far as he could, when he fell dead from fatigue on the banks of the stream called *Scheid-*

baechli (the boundary brook). This is why Urnerboden, situated on the slope facing Glaris, beyond the division of the water, belongs to Uri. It is a curious legend, in which, as so often in Swiss history, the citizen gives his life for the good of his country.

There is no precise measurement of the extent of the *allmends* in Uri. An estimate made in 1852 reckons the *alps* belonging to the lower district of the canton as containing 5,417 *kuhessens*[1]. As the district numbers about 2,700 families of commoners, this allows about the keep of two cows on an average for each family.

The communal forests are of great extent, valuable and well kept up; they are worth at least 4,000,000 francs, which makes a capital of about 1,400 francs for each family. To shew how the partition of the wood is effected, we will give the table of that made in 1865, in the village of Schaddorf, near Altdorf[2]. The first class is that of citizen shareholders who have had for a whole year "fire and light," *Feuer und Licht*, who heat an oven and possess property: they are entitled to fell six large firs; their number amounted to 120. The second class comprises those who have fire and light, an oven, but no property: they are entitled to four firs. There were 30 in this category. The third class is that of persons living alone, and having no property: there were nine of them, each being entitled to three fir trees. Finally, in the fourth class are those commoners who have had fire and light, but who have no house of their own: they can only claim two fir trees. There were 25 of them. The total number of commoners was therefore 184. Of these, 52 had obtained, in addition, timber for new buildings or for repairs; 178 large trunks having been allotted for this purpose. These distributions are large, and enable the families to live in comfort: and nowhere are the cultivators so well lodged as in Switzerland. This explains the origin of the châlets which the stranger admires. The communal forest allows of their construction and their maintenance.

[1] The *Kuhessen* is the quantity of keep necessary for a milking cow during the summer months. There is the same measure in Frisia and all Germanic countries.

[2] See Dr B. Becker, *Die Allmeinde*, p. 37.

Besides its *alp* and forest, the *mark* of Uri possesses 400 hectares of cultivated land, which when equally distributed give about 14 *ares* of garden to each family, from which to raise vegetables and fruit, and flax or hemp for the household linen. All this does not make a competence, but it is a guaranteed means of attaining it: in any case, it is a certain preservative against extreme distress. Add to what is supplied by the communal property the produce of private property and individual labour, and all essential wants are amply provided for.

The principle which here directs the partition of the produce of the communal possessions is that of the most remote times: to every one according to his wants: as, however, wants vary not according to personal requirements, which are nearly identical, but according to those of each individual property, which differ widely, it follows that the rich are benefited and the poor sacrificed. In practice, he who has no cattle gets no profit from the *alp:* while he who has twenty or thirty cows to send on to it derives a considerable revenue from it. The commoner, who has a large châlet in the village and another on the mountain, with large lofts and stalls, requires much wood for repairs and for burning. He is entitled to six large trees for firing, and to as much timber as experts shall deem necessary. The commoner who lives with another has but two fir trees. Equality only asserts itself in the allotment of cultivated land. As the Pastor Becker says, in the words of the Gospel, "to him that hath shall be given, and he shall have more abundantly; but from him that hath not, shall be taken even that which he hath." The system was strictly just at a period when there was no private property, and when consequently each family could derive the same profit from the common stock, but at the present time each commoner profits by the communal domain in proportion to the extent of his private property.

The general principle being that a commoner can only send on to the common pasture the cattle which he has kept in his stalls during the winter, it follows that unless he has a separate meadow of his own to grow hay he has no fodder for cattle in winter, and consequently in the spring has no cattle to send up on to the *alp*. To put some limit on the privilege of the persons most rich in herds, it was decided that no one should send

more than thirty cows or their equivalent on to the *alp*. This rule, however, was inadequate, and for long past, here, as in Florence, Athens, or Rome, the great and the small, the fat and the lean, have been at issue. The matter in dispute bears a strong resemblance to that which set patricians and plebeians at strife with regard to the occupation of the *ager publicus*. There is, however, this difference that, contrary to what is the case in most of our large States, in Uri the "fat" are in the majority. Out of 2,700 families, 1,665 own cattle: there are only 1,035 without any. The malcontents are therefore in a minority, and neither by their vote nor by use of force—to which in fact they have never thought of resorting—have they been able to obtain an alteration of the primitive system, which dates from the time when there was no distinction of rich and poor. To silence the most clamorous demands, 15 or 20 *ares* of garden have been granted to each commoner for the growth of vegetables; besides which they have wood for fires and baking.

As a right of equal enjoyment is, in theory, recognized in every commoner, which he can enforce the moment he fulfils the requisite conditions, to secure greater equality the extent of the arable *Allmend* should be increased so as to realize as large a revenue as the *alp*. This is very much what has been done in the canton of Glaris, which presents the type of the second mode of enjoyment.

Among the primitive cantons, Glaris is the one which has departed furthest from the ancient modes of partition. The produce of the greater part of the communal lands, instead of being divided directly among the inhabitants, is employed to cover the expenses of the commune. There is here no longer any trace of the primitive *mark* comprising the whole district. What remains of the collective domain has become the property of the communes, which have attained full development. These communes have ceased to possess *alps;* which were nearly all sold, after a great calamity which nearly ruined the district. At the present day, the commonable *alps* are let by auction for a certain number of years; and, in complete opposition to ancient principles, strangers may obtain them as well as citizens. The rent goes to the communal treasury. Formerly, the lessees had to render annually a certain quantity of

butter, *Anken*, which was divided among the commoners; and newly-married couples were also entitled to a chamois for the marriage-feast. But now the chamois is rare, and the butter is exported to a distance, instead of being distributed among the inhabitants. Some communes also sell by public auction the timber cut from the forest: others divide it among the commoners, reserving a certain proportion. The dry leaves for litter are equally divided; they are distributed by lot, or else every one goes on a fixed day and collects what he can of them. As the forests, in which they may be gathered, are generally situated on the steepest slopes, it frequently happens that some of the inhabitants are killed by falling from their giddy heights.

The point which merits attention in Glaris, is the care the communes have taken to preserve a sufficient extent of arable land for distribution among the members. If the number of inhabitants increases, or if any parcels are sold for manufactories or private building purposes, the commune purchases fresh land, that the portion of each family may remain the same. A widow, children living together without parents, or even a son or daughter of full age, provided they have had "fire and light" within the commune for the space of a year, are alike entitled to a share. These shares vary from 10 to 30 *ares*, according to the extent of the communal territory. Each member retains his lot for ten, twenty, or thirty years: at the end of this period, the parcels are re-formed, measured, and again assigned by lot. Every one makes what use he likes of his plot, cultivating whatever he requires. He can even let it or lease it to the commune, which will pay him rent for it. These parcels, which lie close to the dwelling-houses, are admirably cultivated. They are actual gardens; and commonly let at the rate of 3 francs an *are*. Every member may send on to the common pasture the cattle which he has kept through the winter; but he pays a tax per head, except for goats, which are the poor man's cow and the favourite animal in the canton, to which it gives the famous cheese, *schabzieger*.

There are also in this district many private corporations which own lands. Ten, twenty, or thirty cultivators form an association possessing pasture and arable land[1]. The produce of

[1] In the canton of Appenzell also the peasants have recently founded two

the joint property is divided among the associates in proportion to the number of shares which each possesses. In the village of Schwaendi, the commune can only assign to each family a few *ares* of cultivated land; but, thanks to these joint-properties, each member farms on the average 12 *ares* of land; and many of them have double that quantity. We have here, then, a perfect type of cooperative societies applied to agriculture, which have lasted for centuries, and which contribute in no small degree to the well-being of those who participate in them. The same spirit of association led the inhabitants of Schwaendi to establish a cooperative society for consumption as well as production; and such a society exists now in the majority of the industrial communes.

It is remarkable to see in this country the agrarian organization of a most remote period in combination with the conditions of modern industry, and how the right of occupation in the common *mark* betters the lot of the workman in the great manufactures. Glaris is not, like Uri and Unterwalden, a purely pastoral canton; it is one of the districts of Europe where relatively the largest number of hands are employed in industrial occupations. Out of 30,000 inhabitants, 10,000 live directly by such occupations, and nearly all the others indirectly. Here, thanks to the communal property, the workmen of the commune obtain, of right and without payment, what the workmen's building societies at Mulhouse secure to their members on payment of a certain sum, viz., a garden for the growth of vegetables. There is, moreover, this difference: at Mulhouse the garden is a scrap of a few square yards; at Glaris it is a field for the cultivation of potatoes, vegetables, and fruits. Nearly all the members of the commune can keep a cow, or at any rate some goats. They have their house, and pay little or no taxes. The expenses of the public service are defrayed out of the revenue of property set apart for the purpose. The school; the church, the board of charity, have their separate *alp*, forest and arable, the produce of which is sufficient for their maintenance.

societies to purchase two pastures, the Wiederalp and the Fählen. The farming is carried on in common; and the shares of the societies are at a premium. See *Journal de statistique Suisse*, 1866, p. 53.

How great is the difference between the lot of the Manchester mechanic, and that of the Swiss commoner. The one lives in an atmosphere thick with smoke, with a dirty garret in an unhealthy lane as his only lodging, and the gin palace as his only distraction. The other, breathing the pure air of the splendid Linth valley, at the foot of the pure snows of the Glarnisch, is subject to the healthy influence of magnificent natural surroundings. He is well lodged; is the cultivator of his own field, which he holds by virtue of his natural and inalienable right of property; he grows a part of his food supply; and is attached to the soil which he occupies, to the commune in whose administration he takes part, and to the canton whose laws he makes directly in the general assembly of the *Landesgemeinde*, feeling himself connected with his fellow-members by the bonds of a common ownership, and to his fellow-citizens by the common exercise of the same rights.

The gloomy condition of the English workman begets in his mind hatred of social order, of his master and of capital; and consequently a spirit of revolt. The Swiss workman, enjoying all the rights natural to man, cannot rise up against a system which secures him real advantages, and which his vote helps to perpetuate. With him the fair motto of the French revolution, liberty, equality, fraternity, is no empty formula inscribed on the tablets of public documents. His liberty is complete, and has been handed down from remote antiquity; equality is a fact sanctioned by all his laws; fraternity is not mere sentiment; it is embodied in institutions, which make the inhabitants of the same commune members of one family, partaking, by equal right, in the hereditary patrimony.

A third type of enjoyment by the commoners is found in Valais. In that district, the fraternal relations of the patriarchal epoch are still to be found in all their simplicity. Almost all the communes have property of considerable extent, consisting of forests, *alps*, vineyards, and corn land. As in Uri, the right of using the *alp* is dependent on private property, insomuch as the number of head of cattle, which each may send on to the common pasturage, depends on the number he can keep through the winter: the forest, however, is divided into parcels, which are distributed by lot among the occupiers. Very

minute rules now regulate the management of the woods; and the *Union forestière suisse* has succeeded in introducing its ideas. It was time for such a measure, as Valais has destroyed its woods in the most disastrous manner. Almost all the gorges, which open into the valley of the Rhone are diswooded to a terrible extent, and are consequently stripped and ravaged by storms and torrents.

The communal vineyards are cultivated in common. Every member of the commune devotes a certain number of days' labour until the wine is bottled. In different localities there are also corn-lands cultivated in the same manner. Part of the communal revenue is expended in the purchase of cheese. The wine and bread, which is the fruit of their joint labour, forms the basis of the banquets, at which all the members of the commune take part, *Gemeindetrinket.* These are exactly identical with the common meals of Sparta and Crete, or the *agapæ* of the primitive Christians. By these banquets, at which prevails a cordiality animated by the generous wine of Valais, a real brotherly intimacy is maintained among the inhabitants. The women are often present, and moderate the excessive drinking and the words to which, as Rousseau avows, the Swiss wine is apt to lead.

Independently of the communes, societies of riflemen also own common lands, growing wheat and vines,—bread and wine answering, in the view of the "*seigneurs tireurs,*" to the first necessities of man. Each member of the association furnishes his number of days' work, and the produce is consumed in common repasts, which take place every Sunday, after the rifle competition. The curé of Varne, M. Kæmpfen, who supplies these details, says much in favour of the influence exercised by these brotherhoods, alike in a moral and economic aspect. Much is said, in the present day, of fraternity; but little is done to create or maintain the sentiment, which is the soul of human societies. The banquet of equals, the *Cœnum* of the early days of Christianity, is now, unfortunately, nothing more than a liturgic ceremony, a cold symbol instead of being a living reality.

Although taxes increase every year, and the communes have often been pressed to sell their lands, the occupiers have always

refused to do so; and have done wisely. As the curé Kæmpfen remarks, a vineyard-commoner, *Weinbürger*, would rather let his wife and children starve than give up these common banquets. In a few localities, for the assistance of the most necessitous, the *allmends* of the plain have been divided into parcels, which are distributed by lot, to be held for life.

In French Switzerland the communal lands have been reduced since the fifteenth century by partition among the inhabitants[1]. There are still, however, 202 communes owning common lands, which, in 77 villages, represent a revenue of 20 fr. for each inhabitant. On July 13, 1799, the Swiss Republic forbade all partition for this very just reason:—"These lands are the inheritance of your fathers, the fruit of many years of toil and care; and belong not to you alone, but also to your descendants." The regulations for the enjoyment of the meadows, the woods, and the arable of the commune are the same as in German Switzerland. In 1826, the commune of Pully-Petit put all its lands, previously divided, once more into community, and subjected them to a periodic partition among all the inhabitants every 15 years, a part being reserved for distribution among new families. In the work of M. Rowalewsky, we see how the communal lands became private property by the periodic partition becoming more and more rare, and finally falling into desuetude.

There seem to be no complete statistics of communal property in Switzerland. We must, therefore, be content with what data can be collected concerning certain cantons or certain towns. In the canton of Unterwalden, the value of the communal property is computed for Obwald, with 13,000 inhabitants, at 11,350,000 francs. In Appenzell, the seven Inner Rhodes, with 9,800 inhabitants, own property estimated at about 3,000,000 francs. The property of the commoners of the town of Soleure consists of 5,409 *juchart* of forest (the *juchart* being equivalent to 3½ roods); 1,041 *juchart* of pasture land, and 136 *juchart* of cultivated land; with the capital and buildings they are estimated at 2,330,338 francs, but they are actually worth three times as much. In the canton of Saint Gall, communal

[1] See the interesting work of M. Rowalewsky translated into German, *Umriss einer Geschichte der Zerstückelung der Feldgemeinschaft im Kanton Waadf.* Zurich 1877.

lands are very extensive. Out of 236 *alps* in the district, which contain 24,472 *stoessen*[1], 143 *alps* with 12,407 *stoessen* are common domain. The common property of the citizens of the town of Saint-Gall itself is valued at 6,291,000 francs. In the canton of Schaffhausen, communal lands comprise 28,140 *juchart*. The whole territory of the canton being only 85,120 *juchart*, collective property occupies one-third of it. The greater part of the forests belong to joint owners, who possess 20,588 *juchart* out of 29,188. In the cantons of Uri, Zug and Schwytz, the *allmends* are also very extensive.

We can see in Switzerland how the State is born of the *mark*. The political association is developed on the basis of the economic, agrarian association of the *allmend*. In primitive times a tribe of Germans (*Alemannen*) settled in the valleys of Schwytz. In the twelfth century, when documents first notice this group of free men, on the occasion of a dispute with the cloister of Einsideln as to the limits of their *mark*, they occupied the valley of the Muta, the Sihl, and the Alb. They formed a *markgenossenschaft*, a society of commoners sharing as joint patrimony *Allmends* of great extent, the remnant of which at the present day is still called *Oberallmeind*. In the valley of Arth, another group occupied the villages of Arth, Goldau, Busingen, Röthen and Lauerz. This group also formed a small independent State, which possessed a common domain, the *Unterallmeind*. The *Unterallmeind* also exists to this day: it comprises cultivated land, forest and *alp*, and amongst the rest all the southern portion of the Rigi. Gersau, with its *Allmend*, likewise constituted an independent state, a republic, which in 1390 was exempted from all suzerainty, on payment of 690 *pfund pfenninge*, and was only united to Schwytz in 1817 by a free convention[2].

In the Baden district, as formerly in Alsace, the *Allmends* were as extensive as in Switzerland; and the system of allotment to which they were subjected was the same. In the plain of Baden and the Rhine valley, the share of an adult member was two or three *morgen* (from 1·2 to 1·8 acres).

[1] The *Stoss*, like the *Kuhessen*, is the indefinite extent necessary to support one cow in summer.

[2] See *Das alte Staatsvermögen des Kantons Schwyz—Bericht des Regierungsraths an den II. Kantonsrath*, Schwyz, 1870.

In certain villages, such as Heddesheim and Landenbach, it was as much as five *morgen*[1]. The enjoyment of the parcels of arable was seldom granted for more than a very short term. A fresh partition was effected every year, or in some places every three years. It followed that the soil was not cultivated with the necessary care, as the holder was not certain of retaining his possession. Rau, from whom these details are borrowed, regards the *Allmends* with great favour. According to him, the motive, which leads to the sale of common lands, viz. the greater produce which individual owners would derive from them, does not exist here, because the *Allmends* are already under cultivation, and, as a rule, are well farmed. The system, he says, affords this very important advantage, that it provides a valuable resource for indigent families, and preserves them at least from the last extremity of distress. Rau entreats the communes to retain their common arable lands; and quotes cases where the final division of these lands has led to most mischievous results[2]. He proceeds to offer advice as to the mode of regulating the partition of the *Allmends*. According to his view, each family should have an equal share; but every one should pay a certain proportional rent, the produce of which should be used to indemnify such members as cannot cultivate their part. The enjoyment should be secured for a term of considerable length, and might be for the life of the occupant. A fault to be avoided is the division of the share of any occupant into too many parcels, which is often detrimental to agriculture. When a lot returns to the common stock for re-apportionment, the outgoing occupant, or his family, if he be dead, should be compensated for the improvements executed by him, for manure, drainage, enclosures, and plantations, that the land may not be neglected during the last years of occupancy. This is a precaution of great importance, which is almost everywhere neglected, and which the inhabitants should endeavour to introduce into the rules of all *Allmends*.

[1] See Rau, *Lehrbuch der politischen Oeconomie*, Vol. II. p. 171.

[2] Zeller (*Zeitschrift für die landw. Vereine des Gr. H. Hessen*, 1848, p. 62, 213, 269) quotes several examples in the South of Germany, where, after the definite partition of the communal lands, the poorest of the cultivators could not preserve their share. They sold their portion, and fell into distress. The common patrimony, repartitioned from time to time, had been an obstacle to pauperism.

According to information which the author owes to M. Karl Bücher, who intends devoting a special treatise to the subject, the *Allmends* still occupy a much greater area in Southern Germany than is generally supposed. They extend as far as Hesse, where they are often constituted on less exclusive principles than in Switzerland. Not only the hereditary burgesses, but all inhabitants, are entitled to a share in the collective property. For instance, the system in force in the small town of Reppenheim, which numbers some 5,000 inhabitants, entitles every inhabitant, after four years continuous residence, to the benefits of the *allmend.* The whole extent occupied by each family is about four Hessian *morgen*, or about a *hectare.* The members cannot claim their share immediately on their marriage or coming of age, but must wait eight years, and then only have a quarter of their entire share. The remainder is granted them from time to time, so that they obtain the full enjoyment when nearly sixty years of age. Every inhabitant may send a cow and some goats on to the common pasturage. He also receives two cubic metres of timber, and one hundred fagots ; and if he grows tobacco on his plot of arable, the produce is sufficient for his whole maintenance. It follows from this system that there is no pauperism, and that the aged are always maintained by their relatives. For the right of occupation is extinguished by their death. In the organization of the *allmend*, the death of the parents is a loss instead of being a gain, as it is made under the system of quiritary succession. Accordingly, the former system tends to strengthen natural affection, while the latter has a contrary tendency. The lands of the *allmend* are not inferior to others in point of cultivation. Those in the neighbourhood of towns are, in fact, carefully cultivated as market gardens, and give very valuable returns. Thus collective property so organized will compare well in an economic point of view with private property.

CHAPTER VI.

JURISTIC FEATURES AND ADVANTAGES OF THE ALLMEND.

WE will now endeavour to determine the juridical nature of these communities of owners to whom the *Allmends* belong; but it is very difficult to do so in a few words because the terms, which we are accustomed to use, are borrowed from the Roman Law, to which this kind of association was unknown. It does not correspond exactly with either the *dominium*, the *condominium*, or the *universitas* of the Roman jurists. The jurists of the middle ages at first refused to notice them; afterwards, they attempted to bring them within the compass of the laws of the Digest. Finally, after the Renaissance, in proportion as the influence of antiquity became more decided, they shewed themselves more hostile to these primitive institutions, which formerly existed everywhere, but which had already disappeared from the Empire when the Roman law was formed. In France, this hostility of the jurists destroyed the peasant family communities even before the French Revolution: it likewise prevented the communities of occupiers being developed as in Switzerland, where they had already escaped the solvent action of feudalism. This is the explanation of their having preserved their integrity there, and having even accomplished a regular evolution and a progress determined by new wants, arising from time to time.

According to a learned professor of the university of Basle, M. Andréas Heusler, the association of commoners does not form a *universitas*, as that term was understood at Rome, but a civil person, a juristic corporation, such as the German law has established so widely. It is not constituted by the union of

individual rights, associated in pursuit of gain, as are modern commercial companies. The corporation has within itself a peculiar vitality and a distinct object, which is the economic prosperity of the country. It subsists of its own force, for the permanent advantage of the village, and not for the immediate and transitory benefit of its several members. For this reason the latter are forbidden to sell or to diminish the value of the common property. This prohibition is generally the first article of their statutes, and the commune or the State is charged with the task of enforcing it. These civil persons are developed within the State under its control and with its support; but they are anterior to it. The *mark* preceded the commune and the State, and its administrative organization served as a pattern for them. The communities of occupiers, which are lineally descended from the ancient *mark*, have preserved a public character. Their regulations, like English byelaws, or the decisions of the assemblies of the *polders* in Holland, are applied by the tribunals. Resolutions passed by the majority are binding on the minority, and public force can compel submission by the latter. For the alienation of any part of the territory, however, or for the admission of new associates, unanimity is necessary.

According to M. Heusler, the right, exercised by the communities over their domain, is not a right of "collective ownership," *Miteigenthumsrecht;* it is a right of "common ownership," *Gesammteigenthumsrecht.* The domain does not belong to a collection of individuals: it belongs to a perpetual corporation, which is preserved unchanged for centuries, whatever may be the number of persons who form part of it. The individual occupant has no share in the landed property, he has merely a right to a proportional part of the produce of the common domain.

Private ownership is, in more ways than one, subordinated to the ownership residing in the community. Thus, at certain periods, the commoners are entitled to depasture their herds on the lands of individuals. The latter may not cut the woods belonging to them, as they please; for, if they destroy them completely, they will have to come to the communal forest for more firewood. There are many regulations, forbidding them to enlarge their house or their outbuildings, without the consent

of the experts of the corporation, because such enlarged buildings would require more timber to keep them in repair. In all times and places, communal property gives a right of way over private property. This is not a servitude in the sense attached to the word by the Roman law; it is a remnant of the primitive agrarian organization. Private property developed out of common property; it is not yet completely free, and is still subject to the trammels of the latter. There are abundant proofs of this fact. We know from history that the districts of Uri and Schwytz originally formed a single common *mark*. The *Tratrecht* or right of common pasturage,—*klauwengang* in Holland,—is still called by the inhabitants of Schwytz *Gemeinmark*, the "common mark," from which it is in fact directly derived.

The economic corporation, which owns the *allmends*, is distinct from the political body which constitutes the commune. Thus at Stanz in the Nidwald, the inhabitants of the commune form a body called *die Dorfleute zu Stanz*. They meet in a general assembly and regulate directly the affairs of the commune; and they take part in the communal banquet, which is held every year, in commemoration of the battle of Rossberg fought in 1308. The economic corporation is called *Theilsame*, and is composed of the commoners of Oberdorf and Stanz together. The separation between the inhabitants who have the right of common and those who are without it, dates from 1641, and is always respected. This example shews that, absolute, or actually equal, democracies are very conservative. Thus the constitutions of the states of New England, which are likewise ultra-democratic, are the oldest in existence.

Anciently the whole canton of Unterwalden formed a single community, the members of which had a right of common over the whole territory. When seignories and abbeys were formed, they gradually usurped a portion of the common domain of the *mark*. Separate jurisdictions were constituted in this way, and each of them wanted to have its separate property. Such was the origin of the existing associations of commoners, which remained separate, even after the suppression of the seignories. The feudal lords had not sufficient power to invade the rights of the peasant partners, *Markgenossen*. On the contrary, the

latter maintained their right of common over the lord's land, which never entirely freed itself from the eminent domain of the community. In his character of *markgenoss*, or "commoner," the lord had his share in the enjoyment of the *Allmends*. Thus, M. Heusler quotes a deed of the year 1227, by which Dietrich von Opphau sells to the monastery of Schoenau, "prædia sua in Sunthoven, agros, prata, curtes, areas, almeine." Mone copies another text, which has nearly the same sense: "Hoba cum omnibus utilitatibus, ad eamdem hobam rite attinentibus, id est marca, silvæ, sagina, acquis, pascuis[1]." Land was sold with the rights of common attached to it, *cum omni utilitate*, or with the *communio in marchis*. In a suit between the bailiff and the inhabitants of Küssnacht, in 1302, the judgment recognized no greater right in the representative of the feudal seignory than in the other commoners. The free peasants had already gained such an ascendancy at this period, that, in 1355, we find the inhabitants of Arth purchasing all the rights of seignory of the place[2].

Is this right of user over the common property a real or a personal right? Is it attached to the quality of the person, or is it appendant on landed property? Originally, there is no doubt, the right was purely personal, as it belonged to every *Markgenoss*, to every member of the association of commoners. It was the natural right of property belonging to the associated inhabitants of the *mark*. Later, however, when it was decided that, in order to exercise the right of common, the inhabitant must support cattle, which he wished to send on to the common pasture, on his individual property during a certain period, certain jurists, especially in the thirteenth century, declared it to be a real right; and speak of it as appendant to private property. This is altogether a mistake. In order to exercise the right of common, it is not enough to have property within the commune, or even to be a member of it; it is further necessary to be a member, by descent, of the association of commoners. The right of common cannot be assigned or transferred, which would be allowable if it were a real right. When the commoner has not kept cattle himself through the winter, he cannot exercise

[1] *Zeitschrift für die Geschichte des Oberrheins*, v. I. p. 391.
[2] See A. Heusler, *Die Rechtsverhält. am Gemeinland in Unterwalden.*

his right to common pasturage by means of cattle borrowed or purchased in the spring. His right exists none the less, although its exercise is, for the time, suspended. It is the same when he leaves the commune, he cannot let his right of common; but, if he returns, and keeps cattle through the winter, he is once more allowed to exercise his right. This right is inherent in his person, and he does not lose it except by entering another community, which is of very rare occurrence.

As a rule, the right of common belongs to every separate couple of hereditary usufructuaries, who have had "fire and light" within the commune, during the year or else at some fixed date: thus, at Wolfenschiessen, the commoner must have passed the night of March 15 there. In strict theory, it is only when he marries and founds a new family, that a young man can claim the right of common in "forest, pasture and arable"; but by an extension of this rule, the right is also recognized of a widow, or orphans living together, sometimes even of every son of an associate who attains the age of twenty-five, provided he live in a separate house. In the Nidwald unmarried daughters, living apart, *Laubenmeidli*, have the same right. Generally, natural children, whose parentage is known, may also claim their share in the "wood, *alp* and field," (*Holz, Alp und Feld*): sometimes, however, their right is restricted. Thus, at Beggenried, they are excluded from the use of the *alp*. The right of common may be purchased, but only with the unanimous consent of the commoners. Its price increased very rapidly, even during the middle ages:—thus, at Stanz, it was purchased in 1456 for 5 *sols;* in 1523 for 50; in 1566 for 100; in 1577 for 400; in 1630 for 800; and in 1684 for 1200.

The regulations, determining the mode of enjoyment, vary in different communities; the general principles are these. On the *Alp*, as we have seen, every one may send the cattle, which he has supported through the winter on his private property. If the *alp* is limited in extent, every one's right is reduced proportionally. In the spring general assembly, before the herds go up to the mountain-pastures, every commoner declares on oath the number of cattle he has kept through the winter. All fraud is precluded, because the experts know exactly how

many every one can manage to support. The slightest attempt at fraud is punished by a heavy fine or by suspension of the right of common. At Giswyl and Sachseln the *alps* are assigned by lot among the commoners. At Alpnach, a rotation has been established, so that the herds of all pass successively, year by year, over each *alp*. In many villages, in order to restore greater equality, they have, for some time past, imposed a tax on each head of large cattle, the amount of which is distributed among those who have no cattle.

When the forests were extensive and the population slight, every one took what wood he pleased: but now there are very stringent regulations determining the mode of use. Certain forests are placed under "ban," *Bannwaelder*, either because they preserve the valley and villages from avalanches, like the one which rises to the east of Altorf; or else, because they must be left for some time, to allow of their growing again. In the forests that are worked, *Scheitwaelder*, juries fix the annual cutting. Parcels are then formed, in proportion to the rights of each class of commoner. Lots are drawn for these parcels, and every one cuts and carries his own share, or else the communal administration delivers it at the dwelling. In some communities, as for example Uri, the firewood and timber are distributed according to the wants of the members. Elsewhere every one receives an equal part of the firewood; but the timber is necessarily allotted according to the requirements of the dwelling-house and out-buildings of each family. The necessary quantity is, however, determined by juries: any extra supply has to be paid for at market value. The sale of the wood from the communal forest outside the community is strictly forbidden; and this prohibition extends even to timber derived from demolitions.

The right of common in the *Allmends* of the plain is regulated according to different principles from those in force for the forest and *alp*. The pasturage in the neighbourhood of the village was set apart for the maintenance of the cattle in autumn, when they returned from the heights; or of the few milking cows kept near home to supply the milk for daily consumption. Gradually the custom sprang up of allowing every family of commoners, whether they had private property

or not, to turn one or two cows on to the *Allmend*, or even to let it to another for this purpose. At Kerns, in Unterwalden, the rule of 1672 entitled every commoner to send two cows on to the *Allmend;* but, by 1766, the population had so increased that they could only send one. If any one sent a second he paid a florin; and members, who had no cow, were entitled to 100 *toises* of cultivable land. In 1826, the tax was put on all cows. In 1851 it was fixed at 7 francs, and the produce was divided among those who had no cow.—At Sachseln every member is still allowed to turn two cows on to the *Allmend.* All, who do not use the *alp*, receive an indemnity, *Allmendkrone*, and a tax of 3 florins is imposed on every head of large cattle[1]. This is a great benefit to the poorer class, who have no stock to send on to the *alp*. The right is by this means made more and more a personal right: it is even transformed into a money rent for such as prefer it or cannot profit by the right of user in kind.

In order to give each family the means of obtaining, by its direct labour, a portion of its vegetable food, the custom has everywhere grown up, of devoting the *Allmend* in the immediate neighbourhood of the village to cultivation. It is divided into a large number of small parcels, five or six of which are united to form a lot, or else it is divided at once into as many lots as there are commoners. The shares so formed are distributed by lot. The occupier holds them for ten, fifteen or twenty years;—or sometimes for life. At the expiration of each period, all returns to the common stock, and a new distribution by lot is carried out. On the death of a commoner, if his son or widow has the right of common, either of them may retain the parcel until the new allotment. As every new household that is formed is entitled to claim a share, and as the shares falling vacant by the death of the holders may be insufficient, some reserve lots are kept for disposal, which are let in the meanwhile. Every member is entitled to an equal share, which he may cultivate as he likes, or even let to others, provided they be commoners. He may plant fruit trees on it; and, in certain communes such as Wolfenschiessen, he is even compelled to do so under pain of fine.

[1] See A. Heusler, *Rechtsverh. am Gemeinland in Unterwalden.*

Although they are only held in temporary occupancy, the *Allmends* are always admirably cultivated. In this respect they are quite different from the communal lands of the Russian village, although under exactly the same agrarian system. To be convinced of this, there is no necessity to go to far-off valleys. Two steps from Interlaken, the focus of fashion which so many thousands visit every year, the *Allmend* of Boeningen may be visited: it covers the whole delta formed by the Lutschine at the point where it falls into the Lake of Brienz. Looking at this surface from a neighbouring height, the Ameisenhügel on the Scheinige-Platte for instance, one sees it divided into a large number of small squares of land, occupied by different crops, potatoes, vegetables or flax, and here and there planted with fruit trees. They are so many small gardens of a few *ares*, cultivated with the spade, well manured, and well cleaned. The produce answers to the excellence of the cultivation. The *Allmend* contains 270 *juchart;* 343 families have a share in it, and each lot comprises 7 parcels. This extreme *morcellement* is retained, that every one may have a part in the different kinds of land.

These associations of commoners are real republics. Their form of government deserves attention, as they might serve as the model for the political organization of autonomic communes. To give some idea of it, we will analyze the constitution of the community of Gross in the canton of Schwytz. The constitutional rules of the land communities of several villages in the canton,—Egg, Trachslau, Einsiedeln, Dorf-Binzen, Enthal, Bennau, Willerzell,—contain nearly identical dispositions. They are subject to revision from time to time.

In the Gross community, all the commoners above the age of eighteen assemble, of absolute right, every year in April to receive the report of accounts, and to regulate current affairs. In case of necessity, the president convokes the assembly, *Genossengemeinde,* for an extraordinary session. All officers are re-elected every two years; and no one may refuse to discharge the office to which he is nominated. An official report is kept of all resolutions. The executive power is vested in the hands of a council of seven, elected by the assembly. This council directs the management of the forest; divides the timber and

firewood; apportions the arable; represents the corporation for judicial purposes; and executes works not exceeding 60 francs, all others having to be voted by the general assembly. It imposes fines and damages in case of a breach of the regulations; and, when necessary, presents indictments to the judicial authorities. The council assembles on the summons of the president. Members, not unavoidably prevented from attending, are fined in case of absence; they are rewarded by exemption from the days' work which they would have to render with the other commoners.

The president is elected by the general assembly, which he has to convene at any time on the requisition of a hundred members. He receives 80 francs, and for extraordinary days he receives a further payment. The other officers are the cashier, who keeps the accounts, and receives and pays out the common fund; the secretary, who draws up the official reports and carries on correspondence; the overseer of works, the forester and the auditor of accounts. All are paid, and are responsible for their acts.

Thus the administration of these land communities is, it will be seen, very complete; it stands midway between that of a political body and a joint-stock company. The commoners manage their own joint interests and collective property, according to precise and well-known rules. The constitutions date from the earliest days of the middle ages; but, having been constantly modified and improved, to suit the necessities of the period, they may be safely said to fulfil adequately the mission entrusted to them. The collective domain is well managed, and the produce equitably divided.

In the author's opinion, the advantages afforded by these institutions of the middle ages and primitive times are so great that he attributes to them the long and glorious existence of Swiss democracy. The advantages are alike political and economical.

In the first place, the commoners, by sharing in the administration of the joint domain, undergo an apprenticeship for political life, and are accustomed to take part in the conduct of public affairs. They assist at deliberations, and may join in them: they elect their delegates, and hear the annual accounts

rendered for their discussion and approval; all which is an excellent initiation into the mechanism of parliamentary government. They are members of real agrarian cooperative societies which have existed from time immemorial, and there is thus developed in them all an administrative aptitude, indispensable in a country of universal suffrage. We should not forget that it is in the township that American democracy also has its roots.

When the natural right of property is really guaranteed to every one, society rests on a firm foundation, for no one is interested in its overthrow. There is no country where the people are more conservative than in the primitive cantons of Switzerland, which have preserved intact the *Allmend* system. On the other hand, in a country where there are only a small number of proprietors, as in England, the right of property is regarded as a privilege or monopoly; and it is before long exposed to the most dangerous attacks. While, in England, there are a million paupers living on official charity, and the agricultural labourers have neither proper lodging, instruction, nor comfort, the commoners in Switzerland are at least removed from the evils of extreme destitution. They have materials for firing, keep for a cow, and the means of growing potatoes, vegetables, and a little fruit.

Moreover, when, in consequence of certain economic causes, the price of coal and wood is doubled, as in the winter of 1873, it is a cause of unspeakable distress to the poorer families; to the Swiss commoner, however, who has his direct share in the produce of the soil, these fluctuations in price matter little. Whatever happens, he has the means of satisfying his actual necessities. This produces a happy security for the future of the labouring classes.

There is a further advantage in the *Allmends:* they retain the population in the country districts. A man who is entitled to a share in the "forest, field, and pasture" in his commune, will not lightly forego all these advantages to seek in the towns a higher salary, which is far from securing him a better condition. The immense cities, where thousands of men are accumulated without hearth, altar, or security for the morrow, and in which is formed the immense army of proletarianism, con-

stantly panting for social revolution, are the peril and the curse of modern societies. If men have but some share of comfort and property in the country, they will abide there, for that is really the place provided for them by nature. Towns, the haunt of pride, luxury, and inequality, foster the spirit of revolt; the country begets calm and concord, the spirit of order and tradition.

When the labourers are attached to the soil by the powerful bonds of collective ownership and partial enjoyment of it, industry is not fettered—as Glaris and the Outer Rhodes of Appenzell will testify—but it is obliged to establish itself in the country, where the workmen may combine agricultural and industrial labour, and where they will be surrounded by better conditions, moral, economic and sanitary. It is to be regretted that so many thousands of men depend for their daily subsistence on a single occupation, which is liable to interruption, from time to time, by every kind of crisis. When they have a small field to cultivate they can bear a stoppage of their trade without being reduced to the last extremity.

The workman in the great modern industries is often a cosmopolitan wanderer, to whom 'country' is a word void of meaning, whose only thought is to struggle with his employer for an increase of wages; this is simply because there is no tie to attach him to his native soil. To the commoner, on the contrary, his native soil is a veritable *alma parens,* a good foster-mother. He has his share in it by virtue of a personal inalienable right, which no one can dispute, and which the lapse of centuries has consecrated. The patriotism of the Swiss is well known in history: it has worked wonders for them, and even now it brings them from the ends of the world home to their native place.

It has often been said that property is the true condition of liberty. He who receives from another the land which he cultivates is dependent on him, and cannot be completely independent. In England, France, Belgium,—everywhere, where they wished to secure liberty of voting, they were obliged to introduce the ballot and to take great precautions that the tenants might be able to conceal from their landlords the knowledge of the vote they had left in the box. In this respect it

was logical not to give the suffrage to those who did not exercise the right of property. In Switzerland, by means of the *Allmends*, a solution is arrived at: every one has the suffrage, but every one likewise enjoys the right of property.

Hitherto all democracies have perished, because after establishing equality of political rights, they have failed to create an equality of conditions such as to prevent the struggle between the rich and the poor leading to various revolutions, finally ending in civil war and a dictatorship. Macchiavelli declares this truth in striking terms: "In every republic, when the struggle between the aristocracy and the people, between patricians and plebeians, is terminated by the final victory of democracy, there remains but one contest, which can only end with the republic itself: it is that between the rich and the poor, between those who have property and those who have none." This danger, so clearly indicated in the above passage, and perceived by all great politicians, from Aristotle to Montesquieu, in part escaped Tocqueville, who had not sufficiently studied the economic side of social problems. In the present day, the danger is apparent to every one, and recent events tend to shew once more that in this lies the real difficulty of definitely establishing a democratic government. By allowing the distribution among all of a part in the collective prosperity, the *Allmends* prevent excessive inequality opening a gap between the higher and lower classes. The struggle between rich and poor cannot lead to the ruin of these democratic institutions, for the simple reason that no one is very poor or very rich. Property is not threatened: who could threaten it, where all are proprietors?

In America and Australia, the new democracies, which are growing up on unoccupied lands, should reserve in each commune a collective domain of sufficient extent to establish the ancient Germanic system: otherwise, when increase of population creates distress, there will have to be established a poor-rate as in England. Surely it is a thousand times better to give, instead of relief, which only demoralizes the receiver, land —an instrument of labour—by which, by his own efforts and in virtue of his natural right, he can obtain his means of subsistence. A comparison between the degraded inmate of an

English workhouse and the proud, active, independent, and industrious commoner of the Swiss *Allmend*, is sufficient to illustrate the profound difference between the two systems. In all that regards the civil law, Anglo-Saxon colonies derive their inspiration from nothing but the feudal law of England: they would do better if they turned a glance towards the primitive institutions of their race, as seen still in full vigour in democratic Switzerland.

In Europe, economic reformers have everywhere insisted on the alienation of common lands, in spite of the opposition of the peasants and the conservative party. It was a right instinct that led the peasant to defend this legacy of the past, for it answered a social necessity. It is often imprudent to lay the axe to an institution hallowed by immemorial tradition, especially when its roots penetrate far into an age older than the establishment of great aristocracies and centralized monarchies. Before compelling the communes to sell their property, it would have been well to examine whether it could not be turned to profitable account, either by regularly planting woods, or by temporary grants of arable. The example of Switzerland shews us how this would have been possible. In the author's opinion, the increase of the communal patrimony should be fostered, but improvements should be introduced in the method of its cultivation.

CHAPTER VII.

THE GERMANIC MARK.

VILLAGE-COMMUNITIES with periodical division of the lands, such as are still met with in Russia and Java, existed likewise in ancient Germany. The economic condition of the German tribes and the agricultural process employed by them afford a perfect explanation of these institutions so anomalous at first sight.

In primitive times, men lived solely by the chase, as the Indians of North America do at the present time; when game failed, under the pressure of hunger they sought sustenance in the flesh of their conquered enemies. The savage is a cannibal from the same motive which incites shipwrecked sailors on a raft to become so, namely hunger. Human bones of the stone age, discovered by Professor Schmerling in the grottoes of Engihoul, near Liége, still bear the mark of human teeth, which had broken them to extract the marrow. Hunting tribes are warrior tribes; they can only live with their arms in their hands, and the limits of their hunting-ground are a constant source of bloody contests. Aristotle has caught this feature of early societies. "The art of war," he says, "is a means of natural acquisition, for the chase is a part of this art. Thus war is a species of chase after men born to obey, who refuse to submit to slavery."

When, at a later period, man has succeeded in taming certain animals suitable for his sustenance, a great change takes place in his lot; he has no longer any fears for the morrow, having the means of subsistence always at hand. The quantity of food produced on the same space being larger, the

social group can become more numerous: and so the tribe is formed. Man has ceased to be the carnivorous, cannibal animal of prey, whose only thought was to kill and eat.

More peaceable and affectionate sentiments have come to life; for, in order to the multiplication of the flocks, there is need of forethought, care for their sustenance, attachment to them, even a sort of love for them. The pastoral system is not therefore incompatible with a certain stage of civilization. Although the use of arms is not excluded, there is not the perpetual struggle, the combats, the ambuscades and daily massacres, characteristic of the preceding period. The cultivation of certain alimentary plants is also compatible with the nomadic life. Thus the Tartars cultivate the cereal bearing their name, the *polygonum tartaricum*, or buckwheat. They burn the vegetation on the surface; sow and reap the harvest in two or three months, and then betake themselves elsewhere. The Indians cultivate a kind of wild rice in the same way. Such is agriculture in its earliest stage. Men do not leave the pastoral system for the agricultural from choice, the conditions of the latter being infinitely harder; they only do so compelled by necessity. When the population increases, agriculture is the only means by which it can obtain sustenance. In his excellent work on Russia, Mr Mackenzie Wallace seizes the passage from the pastoral to the agricultural life among the Bashkir and Kirghiz tribes while in actual process, and he shews how periodic partition of the cultivable land was originally introduced among the Cossacks. We thus see in actual development the successive stages which mankind has traversed[1].

The Germans, when the Romans first came into contact with them, were a pastoral people, retaining the warlike habits of the primitive hunters, and bordering on the agricultural system. It seems generally admitted that the tribes of the Aryan race, before their dispersion, had no knowledge of agriculture, for the terms designating farming implements and culture of the land differ in the different branches of the Aryan languages, while words relating to the management of flocks are

[1] Mackenzie Wallace, *Russia*, Vol. II. c. xxi. p. 45.

similar. The Germans, the last race to enter Europe, had not yet increased in numbers sufficiently to require any large portion of their support from the rude labour demanded for tillage and harvest. Except under the pressure of necessity, man never devotes himself to long and arduous labour.

Certain German writers have maintained that the Germans, in the time of Tacitus, practised the triennial rotation of crops, reserving a third part of the arable land for winter grain, and another third for summer grain, while the remaining third lay fallow. M. Roscher has proved this opinion to be erroneous[1]. Agriculture, at this period, was on the contrary in the highest degree "extensive." The phrase of Tacitus describes this method of cultivation very faithfully,—*nec enim cum ubertate et amplitudine soli labore contendunt,* "they do not attempt by their labour to vie with the fertility and extent of the soil." Cæsar before him had remarked that the Germans applied themselves very little to agriculture, *agriculturæ minime student,* and that they never cultivated the same land two years together. The magistrates, who annually allot to the several families the share which comes to them, make them pass from one part of the territory to another. Tacitus tells us the same thing: *Arva per annos mutant et superest ager,* they cultivate fresh lands each year, and there always remains a portion undisposed of.

To understand these passages, often incorrectly translated, we must take into consideration an agricultural practice, still in force in our day, in certain villages possessing large tracts of common land, as in the Ardennes in Belgium. Part of the heath is divided among the inhabitants, who obtain from it a crop of rye by the process of "*essartage*" or "*écobuage*[2]." The

[1] *Ansichten der Volkswirthschaft: Ueber die Landwirthschaft der ältesten Deutschen.*—A French translation of this work has recently appeared bearing the title "*Recherches sur divers sujets d'économie politique*, by M. W. Roscher." The entire passage in Tacitus is as follows: *Agri pro numero cultorum ab universis per vices occupantur, quos mox inter se secundum dignationem partiuntur; facilitatem partiendi camporum spatia præstant. Arva per annos mutant et superest ager; nec enim cum ubertate et amplitudine soli labore contendunt, ut pomaria conserant et prata separent et hortos rigent: sola terræ seges imperatur.*

[2] *Essartage* or *essartement* is a method of cultivating forest land, still employed in some districts of the north-east of France. It is performed by digging up all the vegetation on the surface, and then submitting the soil to

following year, another part of the common land is parcelled out and cultivated in the same manner. The portion so worked is afterwards abandoned to the natural vegetation; and it becomes common pasture again for eighteen or twenty years, after which period it is again subjected to "essartage." Suppose the population so small as to allow of the annual allotment of a *hectare*[1] (about 2½ acres) to each inhabitant, and the village will be able to subsist by means of this primitive method of cultivation, which was exactly that of the Germans. It will not be necessary to manure the soil or to expend capital on it; its extent will serve instead; *spatia præstant,* as Tacitus says. In the southern parts of Siberia, the land is cultivated in this way. Barbarous as it may appear, it is the most rational and economical method of cultivation, for it is the one which yields the largest net profit. So long as space suffices, there can be no object in concentrating capital and labour on a small surface. It is the rule, that a second application of capital to the soil produces relatively smaller profit than the first. It is only density of population that can render "intensive" cultivation necessary or profitable. Under a system of temporary cultivation, where the same land is only tilled once in twenty years, and which occupies different portions of the territory in succession, the annual partition of the soil is obviously a natural, and almost a necessary, result. The labours of cultivation are so simple that this redivision can work no manner of harm to any one. The mode of tenure is in accordance with the mode of cultivation. The Germans cultivated, for the most part, the cereal

écobuage. The soil is afterwards cultivated for two or three years, and then left for fresh *essartage* after fifteen or eighteen years.

Ecobuage is an operation which consists in raising the surface layer of soil, and burning the organic matter contained in it. LITTRÉ, *Dict.*]

1 Allowing 10 hectolitres of corn as the produce of a hectare, a village of 200 inhabitants would require 200 hectares a year; which demands a cultivable territory of 4,000 hectares for a rotation of twenty years. The Germans had a relatively large number of cattle, and one must, therefore, add another 1,000 hectares of pasturage and 1,000 hectares of forest. The density of the population would be reduced to three or four inhabitants to the square kilometre, or hundred hectares. On this computation, Germany would have contained two millions of inhabitants.

[Adopting English measures:—on the supposition that an acre would yield 11 bushels of corn, 200 inhabitants would require 500 acres a year. And the whole cultivable land would have to be 10,000 acres, with an additional 2,500 acres of pasturage and the same amount of forest. The population would, therefore, be about one to every 150 acres.]

which occupies the soil for the shortest time, and is best suited to newly cleared lands, namely oats. As it is sufficient to sow it in spring, it escapes the severity of the winter, and was, therefore, especially suitable to the severe climate of Germany. Pliny tells us that the tribes of this country lived exclusively on oatmeal, which was also formerly the principal food of the Scotch, and is so at the present time in the Highlands. The Germans also cultivated summer barley, to make a fermented liquor, Tacitus tells us, somewhat resembling wine, that is to say, beer. The observation of Pliny is correct as regards the cereals grown by them; but they looked to animal food for the greatest part of their sustenance. "They eat wild fruit, game and curds," says Tacitus: while Cæsar tells us "They live for the most part on milk, cheese and flesh." *Agriculturæ non student, majorque pars victus eorum in lacte, caseo et carne consistit*[1]. They were, therefore, still hunters and shepherds rather than agriculturalists. Their numerous herds, ill-fed and of poor quality, constituted their chief wealth.

For the chase, they had the depths of the common forest, where, besides the stag and deer, there was then abundance of larger animals, since disappeared, the reindeer, the elk, and the wild ox: while for the maintenance of their cattle they trusted to the common pasturage, which consisted of permanent meadows in the valleys, and of waste or fallow land, eighteen or nineteen times as extensive as the land under temporary cultivation. Not only was all the territory the undivided property of the clan, but their collective enjoyment extended over nearly the whole of it. Only a small portion was subject to private occupation for a year. The tenure characteristic of the pastoral system still embraced almost the whole land. Hereditary ownership was only applicable to the house and enclosure belonging to it, as in Java or Russia. *Suam quisque domum spatio circumdat*, says Tacitus. This was the salic soil, *terra salica*[2], which was transmitted by succession to male children

[1] *De Bell. Gal.* l. vi. c. 22.

[2] *Advertendum in hac temporum antiquitate Germanos habuisse domum quam vocabant Sal; circa domum fuisse Salbuck seu curtim, gallicè courtil, spatiumve terræ domui circumdatum et sæpe cinctum spatium, illud cum domo est seliland, seu terra salica quæ ad solos filios pertinebat; nec immerito, quum filiæ in aliam domum terramque salicam transirent.* Brotier, *sur Tacite*, quoted by M. J. Simonnet, *Histoire de la Saisine*, p. 54.

and relations, but could not be inherited by females. The inclosure, surrounded by a quickset hedge, could not be entered by any one without the consent of its owner. In this sacred domain he was sovereign. In his own house, as our proverb says, every one is king.

The common territory of the clan bore the name of *Mark* or *Allmend, Almennings Maurk*[1] among the Scandinavians, *Folcland* among the Anglo-Saxons. Sometimes, too, it is denoted by the name of *gau*, from the same root as *γῆ*, *γαία*. The *marken* were called *geraiden* in Alsace, or *hundschaften* or *huntari* among the Alamanni. They included cultivated land, pasturage, wood and water. Originally they were of vast extent, and embraced whole valleys, as in Switzerland and the Tyrol, and elsewhere immense countries, where states such as Austria, Bavaria, Carinthia, Carniola and Brandenburg have subsequently grown up. Each family was entitled to a temporary enjoyment of a portion in each division of the *mark;* but no one could exercise any permanent or hereditary right over it. It is what Cæsar[2] and Tacitus[3] tell us of the Germans. Grimm asserts that in the ancient German language he has found no word rendering the idea of property. The word *Eigenthum* is of recent origin. It springs from the epithet *eigen*, *proprium*, that which is peculiar to the individual. Individual dominion only appears in the *allod* (from *od*, goods, and *all*, complete) of the Saxons. *Merum proprium odit;* there is no mention of ownership till after the Germans have entered into relation with the Romans. The names *Sondergut* and *Sondereigen*, given to private property, indicates that it arises by separation (*sonder*) from common property. The portion of the *mark* occupied by one of the groups of common origin, called by Cæsar *cognationes*, and by Tacitus *propinquitates*[4], was designated by the name of *geburscip*, *vicinium*,

[1] In Sweden the term *Lands almanningar* distinguished the common domain of the whole nation from that of the communes *Bys almanningar*.

[2] *Neque quisquam modum certum aut fines habet proprios, sed magistratus ac principes in annos singulos gentibus cognationibusque hominum, qui una coierunt quantum et quo loco visum est agri attribuunt; atque anno post alio transire cogunt* (*De Bel. Gal.* l. VI. c. 29).

[3] *Non casus nec fortuita conglobatio turmam aut cuneum facit sed familiæ et propinquitates* (*Germ.* c. VII.). This *propinquitas* was alike the military and economic unit.

[4] The Greek *γένος*, and the Roman *gens*, equally with the village of Java or

the *vicus* of the Romans, the *voysiné* or *visnet* of the middle ages in France, the *vinâve* at Liége up to the present day. We possess an edict of Chilperic of 581, which proves that at this date hereditary ownership was but just introducing itself among the Franks. This edict declares that sons and daughters, brothers and sisters, are to inherit the goods of the deceased in preference to the other inhabitants of the village, *vicini*[1].

At the time of the Salic law private property in land seems scarcely to have been developed. This law nowhere mentions any action relating to property in the soil: it does not recognize seizure of lands; execution only applies to moveable goods, which constitute the *alodis*[2]. If the moveables of the debtor are insufficient, the creditor loses all his remedy, as he cannot seize land. When the payment of the *Wehrgeld*, which admits of no abatement, is in question, the insolvent debtor may be compelled to alienate, by the formality of *Chrenecruda*, his rights in the collective domain to his nearest relative, who is then obliged to pay for him.

Even when arable land had been gradually converted into private property, the forest and pasturage remained common property. In documents of the middle ages there is constant reference to rights of enjoyment in forest or pasturage. "Manses" are bequeathed or sold *cum terris cultis et incultis et silvis communibus*. The *campus communis*, referred to in the law of the Burgundians, Tit. 31, is preserved in Germany, England, and France, under the names of *allmend*, *common*, and *communaux* respectively.

The *Mark*, like the ancient *Gens*, had its altars and its sacrifices; and, in later days, after the introduction of Christianity, its church and common patron-saint. It had a tribunal which took cognizance of moral offences, and even, in the early times, of crimes committed within its territory.

The families, forming the community, had only a right of enjoyment, the ownership of the soil resting in the community

India, and the Russian *mir* or Slav *gmind*, were only patriarchal groups founded on common descent.

[1] Pertz, Leg. II. 10, art. 3.

[2] See Sohm, *Altdeutsche Reichs- und Gerichtsverfassung*.

itself[1]. In course of time, however, portions of the common land were granted for a term more or less long, either gratuitously, or in consideration of a rent. Grants of this kind are met with everywhere, of the *Folcland* in England, of the *Hammerka* in Frisia, of the *Almanniger* in Sweden and Norway, and of the *Allmend* in Germany, just as of the *ager publicus* and *terræ vectigales* at Rome. Such is the origin of the portions granted out for enjoyment for life or years, which we still meet with in different countries, as in the *Allmendgærten* of Uri and Gersau, the *Gmeinmerkgüter* of Lucerne and Schwyz, the *Gemeinfelder* (*Campi communes*) of the Trèves district, the *Gemeinen Loosgüter* of Peitingau in Bavaria, the *Markfelder* of Westphalia, the *Geraidengüter* of Alsace and the Palatinate, the *Hubbmannschaften* of Hundsrück, and the *Rolltheile* in Eichsfeld. It is these parcels of common which have, by gradual usurpations, given birth to *Sondereigen*, or private property.

We have few details as to the manner in which the allotment of the soil was effected in early times. Cæsar tells us: "No one has fields marked out or land as his own property. But the magistrates and chiefs assign lands every year to the clans, or *gentes*, and to the families living in association." These families, living in association and cultivating the land in common, are the exact picture of the patriarchal families, which are to be found at the present day among the Russians and Southern Slavs, and which in the middle ages existed throughout Europe, and especially in France and Italy. It is the primitive group of the pastoral period, whose existence has been perpetuated from the days of the Aryans in Asia up to our own. To understand properly what is said by Roman historians on this subject, we must never lose sight of the institutions of nations whose economic condition resembles that of ancient Germany. According to Cæsar, the chiefs effect the partition, as they think fit. In the distribution, regard is paid, according to

[1] This appears clearly in texts of the middle ages. For example: *In hac silva nullus nostrum privatim habebat aliquid, sed communiter pertinebat ad omnes villæ nostræ incolas.* DIPL. of 1173. Bodmann I, p. 453, quoted by Von Maurer. The association of inhabitants was called *communitas* or *communio*. LEX BURG. Add. I. Tit. 1, c. vi. *Sylvarum, montium et pascuorum communionem.* DIPLOME of 1234, quoted by v. Maurer, *Einleitung, etc.*, p. 144, *communionem quæ vulgo Almenda vocatur.* DIPL. of 1291. Id. *In communitate villæ Merle, quæ Allmend vulgariter appellatur.*

Tacitus, to the number of cultivators: *pro numero cultorum;* and to the rank of the co-partners: *secundum dignationem partiuntur.* Of these two features one represents itself in Russia, where the division is made by *tiaglos*, that is, by *units* of labour, according to the number of adult labourers; while the other reappears in Java, where the chief of the *dessa*, the *loerah*, the elders and other officers of the commune actually have a portion of land proportionate to their rank. Horace, too, depicts in the following terms the annual division of lands, as practised in his time among the tribes dwelling on the banks of the Danube:—

Et rigidi Getæ
Immetata quibus jugera liberas
Fruges et cererem ferunt;
Nec cultura placet longior annua;
Defunctumque laboribus
Aequali recreat sorte vicarius.

He is here rather speaking of the division of labour between two groups of inhabitants, which alternately cultivate the soil for the entire tribe. Cæsar tells us exactly the same thing of the Suevi, the most warlike and powerful of the Teutonic tribes[1]. "Those who remain in the country cultivate the soil for themselves and for the absent members, and in their turn take arms the next year, while the others remain at home. But none amongst them can possess the land in severalty as his own, and none may occupy for more than a year the same land for cultivation. They consume little corn; but live chiefly on milk and the flesh of their herds, and devote themselves to the chase." These are the habitual features characteristic of the economic condition of the German tribes. The chase and the rearing of their herds provide the greatest part of their food; agriculture takes but the third place. The soil is only cultivated for a year: landed property is unknown: and the arable land is divided among the inhabitants for mere temporary enjoyment. There was the custom, apparently peculiar to the Getæ and Suevi, which leads one to suppose that the produce of the soil was originally gathered in mass to be subsequently divided; each half of the inhabitants worked

[1] *Com.* IV. 1, 3.

alternately for the other. Community here, then, is more intimate than among the other German tribes, and belongs to a more primitive system, such as we cannot meet with in the wildest forests of Russia, or the most remote districts of Bosnia.

Aristotle seems to have recognized two forms of community. "Thus," he says in *The Politics*, lib. II. c. 3, "the fields would be private property, while the harvest would belong to all. This practice exists among some nations. The land, on the other hand, might be common, but the harvest would be divided among all for private ownership. This kind of community is to be found among certain barbarian tribes." In fact, Diodorus of Sicily and Strabo bear witness to the existence of this custom in several passages, which will be found in Chapter X. The periodical partition of the land must have been a very general custom in the ancient world, to have been noted in so many different quarters, among nations so different in race, in origin and in ways of thought.

In Germany, every inhabitant was entitled to a portion of land large enough to supply the wants of his family. Except for the chiefs, who obtained a larger share, this portion was the same for all[1]; and to insure complete equality, each part of the arable land was divided into as many parcels as there were co-partners, and lots were then drawn for these parcels. The measurement was made with a cord, *per funiculum*, called in German *Reeb*, or *Reepmate*[2]. This word gives the name to the *Reebnings procedur*, a custom which lasted for a very long time in the north, and particularly in Denmark, even after the periodical partition had fallen into disuse. The equality of

[1] It seems, however, that, either in certain districts or at a later period, the portion of land depended on the importance of the house, for Grimm quotes a curious maxim of ancient German law: "The habitation, *tompt*, is the mother of the field; it determines the portion of arable, the portion of arable determines that of pasture, the portion of pasture that of forest, the portion of forest that of rushes to thatch the roof, the portion of rushes divides the water in the streams."

[2] M. von Maurer, whose profound researches have thrown so much light on this subject, quotes some curious texts in his book *Einleitung zur Geschichte der Mark- Hof- Dorf- und Stadtverfassung*. Thus: *Einleitung*, p. 278, "*In divisionem mansorum more theutonico exercitui zeugitanam vel proconsularem provinciam funiculo hereditatis divisit.*" Victor Vitensis, *Hist. persec. Vandalicæ*. Lib. I. c. iv.—"*Henricus comes de Racesburg adduxit multitudinem populorum de Westfalia ut incolerent terram Polaborum et divisit eis terram in funiculo distributionis.*" Helmod, *Chronic. Slav.* Lib. I. c. xxxi.

the portions seemed so essential, that, when, in course of time, the portions had become unequal (*pro inæqualitate mansorum*), any one who had a smaller portion than his neighbours, could demand a new measurement, *reebning*, that the primitive equality might be restored. In the law of the Burgundians we find a passage which refers to the same practice: "The claim of co-partners to have the lots in the common land made equal cannot be refused[1]." It seemed so necessary for every free man to hold property, that even in later times, when the sale of land was introduced after the conquest, every one was forbidden to sell his lot who did not possess others elsewhere. The law of the Burgundians, Tit. 84, c. 1, runs:—*Quia cognovimus Burgundiones sortes suas nimia facilitate distrahere, hoc præsenti lege credidimus statuendum, ut nulli vendere terram suam liceat, nisi illi qui alio loco sortem aut possessiones habet.*

The arable land was at first divided into separate fields (*ager*) called in German *Wang, Kamp, Gewanne,* or *Esch.* This field was surrounded by a wooden fence or by a ditch, in the construction of which all were bound to assist. The chief of the village summoned all the inhabitants for this purpose, at certain fixed periods, and the work was the occasion for a public holiday. This practice has been preserved almost up to our own days in the Dutch province of Drenthe and in Westphalia. There we find the *Eschen* distinctly marked out in the midst of the heath; as masses of litter are being constantly brought from the stables to manure it, the earth is raised several yards. When the triennial rotation of crops was introduced into Germany,—which must have taken place before the time of Charlemagne, as it appears in the Capitularies as completely established,—the winter, summer, and fallow fields were distinguished by different names:—*Winterfeld, Sommerfeld,* and *Brachfeld,* or *campus apertus.* Each of these fields was in turn sown with rye, then with oats, and finally left to lie for a year. It was divided into long strips all bordering, on one side, on the road left for agricultural purposes. These

[1] Lex Burgond., Add. I. Tit. 1, c. V. *Agri communis nullis terminis limitati exæquationem inter consortes nullo tempore denegandam.* See also Von Maurer, *Einleitung*, p. 273: *Saxones eam terram sorte dividentes.*

parcels were called *deel, schiften,* in the North; in England, *oxgang* and *shifting severalties;* elsewhere, *loos, luz* or lots. Traces of the system are still visible on all sides in Germany. We have but to cross the country, and see the long strips of cultivated land, stretching parallel and side by side with one another, often arranged round a circle. The parcels in each field had to be tilled at the same time, devoted to the same crops, and abandoned to common pasture at the same period, according to the rule of *Flurzwang,* or compulsory rotation. The inhabitants assembled to deliberate on all that concerned the cultivation, and to determine the order and time of the various agricultural operations. This custom, which is general in those provinces of Russia where village communities exist, was, until quite recently, in practice in certain districts of Westphalia, Hanover, and Holland.

Some writers have refused to allow that there were lots cast for the parcels to be distributed; but there are numerous evidences of the fact[1]. In the first place, the parcels were in German called *Loosgut,* for which the Latin translation is *sors.* In the Burgundian law, the terms *sors* and *terra* are used

[1] M. Fustel de Coulanges recently wrote in the *Revue des Deux Mondes* of 15 May, 1872: "The word *sors* was applied to all land that passed by descent. The idea of casting lots was not implied in it." Undoubtedly, at a more recent period, the word *sors*, or *sortes*, implied neither casting of lots, nor periodical partition, any more than does the phrase *lot of land* in the present day; but the terms obviously originated in the drawing of lots, customary in early times. All the land of Gaul was not confiscated and distributed by lot; here M. Fustel is certainly correct. But there is no doubt, that after the conquest it was by means of lots that the land taken from the vanquished was apportioned. See Von Maurer, *Einleitung*, p. 82. M. Fustel de Coulanges, in an excellent article in the *Revue des Deux Mondes*, 15 May, 1873, himself quotes several facts which prove that in ancient times the apportionment of the soil was effected by means of lots. "*Sors patrimonium significat*, says Festus the grammarian. Compare Livy I. 34. This sense of the word *sors* was a very ancient one in the Latin language; it was the same with the Greeks, who from a very remote period attributed to the word κλῆρος the double sense of decision by lot and of patrimony. It is clear that the word *sors*, which we meet with in the Merovingian period, had originally the sense of decision by lot." "Decision by lot was an old custom, which the population of Greece and Italy had always made use of in the apportionment of the soil, without which it does not appear how private property could have been established."

It is an undoubted fact, that the word *sors* at a certain period denoted hereditary property; but if there had been any apportionment by lot, the soil must evidently have been originally common property; for a division by lot is not resorted to except to pass out of communism. Originally the portion to be occupied for temporary enjoyment was assigned by periodical drawing. Subsequently, portions so obtained were transmitted by descent; private property sprang up in fact from the last apportionment by lot.

synonymously. Possessors of portions in the same village community were called *consortes*, some, in many cases, being Germans, and the others Romans. The law of the Vizigoths x. t. 1, c. 2, 1 speaks of *sortes Gothicæ* and *sortes Romanæ*. From this practice of drawing lots our word *lot* is derived, which at the present day merely denotes a portion of land. The German conquerors, however, probably soon abandoned the periodical partition, which was an institution little in harmony with the condition of the Roman society in the midst of which they established themselves.

Of this there seems to be no doubt, that periodical partition by lot remained in practice, from the most remote ages down to our own time, in certain villages of Germany, and in some localities in Scotland. In the villages of Saarholzbach, Wadern, Beschweiler, Zerf, Kell, Paschel, Lampaden, Franzenheim, Pluwig, and others, in the district of Trèves, the houses, with the gardens adjoining them, were alone subject to private ownership[1]. Arable land of all kinds was periodically divided by lot. This system was kept up in Saarholzbach until 1863. In the other communes private property was introduced between 1811 and 1834, by means of the operation of registration. In the majority of communes in the valley of the Moselle and the Saar, partition by lot ceased about the end of the last century to be applied to arable land: but was still practised for the meadow and woods.

Many of the communes of Eifel, a cold and elevated district, lying between the Rhine and Belgian Ardennes, divide the large wastes belonging to them in the same way. Each lot is put in cultivation for a year and then returns into the common pasture land. In the district of Siegen, the communes possess splendid oak coppices, which are cut every twenty years, and supply fuel, and bark for tan. When the underwood is carried away, the surface is burned, and so yields without further manuring a good harvest of rye. The portion of these woods to be cut each year is divided into parcels, which are distributed by lot among the inhabitants.

[1] The accurate description of these curious customs is due to M. Hanssen. See *Die Gehörschaften im Regierungsbezirk Trier*. M. A. Meitzen, in his great work *Der Boden des preussischen Staates*, has completed the study of them.

In the villages of the Saar and the Moselle the partition was effected at first every three years, then every six, and finally every twelve or eighteen. The periods of re-distribution thus constantly tending to grow longer, the custom of individual ownership began to establish itself, and insensibly took the place of the ancient community. The custom of partition was however so deeply rooted, that it was resorted to from time to time after long intervals. Thus in the village of Losheim no division was effected from 1655 to 1724: but in the latter year the commune determined to re-establish the division of the land, "seeing that, in consequence of deaths and marriages, the parcels have become so small, that even the richest inhabitants cannot properly manure and improve their portions of land, by reason of their being so small and scattered." M. A. Meitzen has given, in his great work *Le Sol de la culture en Prusse*, a plan of partition in the commune of Saarholzbach, in which the method of division is clearly shewn. The arable land is divided into rectangular fields, each of which is subdivided into parcels. A lot is formed by uniting several of these parcels. In 1862, the commune counted 98 co-partners, and its 104 hectares (or 260 acres) of arable land were divided into 1,916 parcels. But every holding was not necessarily of the same extent: one was 23 *morgen*, another 5½, and another only 2½. It also possessed forest and a great extent of waste land: these were divided every year. In Nassau the commune of Frichofen possessed several common tracts, which were divided every year among the inhabitants by lot[1]. The same custom was maintained, until our own times, in several communes of Hundsrück and of the districts of Ohtteiler and of Saarlouis, between the Saar and the Moselle. The same custom is also found in the Bavarian Palatinate.

The division of land by lot was still so generally practised in Germany in the middle ages, that Silesian documents of the thirteenth century, quoted by M. Meitzen, call this custom *mos theutonicus*. The collection of Danish laws, compiled about the middle of the same century, speaks of the partition of lands by lot as a custom generally followed. In many English villages meadows are still found divided into parts, which are annually

[1] See Cramer, *Wetzlar Nebenst*, pp. 354, 364.

assigned by lot among the co-partners[1]. They are called *lot meadows* and *lammas land*. In Friesland and in Over-Yssel in Holland, meadows are also found, in which the various parcels are mown by the different co-proprietors in succession. More rarely portions of the arable land pass from one to the other in succession, and for this reason are called *shifting severalties* in England. It is not uncommon for a group of cultivators to rent land, of which they occupy each part in turn: this is the custom known by the name of *run-ring*. Sometimes the apportionment is not effected by lot, but according to a rotation determined once for all. When the hay is cut and carried, the rights of the common pasture revive, and all the inhabitants come and throw down the inclosures which have been erected. It is an occasion of holiday and public rejoicing, called *lammas day*. According to M. Dareste de La Chavanne, tradition of the equal division of certain portions of the soil was constantly preserved in France. Thus, whenever a new agricultural colony was formed in the middle ages, we find the ancient communal system. There is a curious example of this fact in a grant made by the Abbey of Saint Claude to the inhabitants of Longchaumois: experts, elected for the purpose, were to divide among the younger members the lands to which they were entitled.

Sir H. Maine quotes, from a document submitted to parliament, an example of rural organization, which exactly reproduces the characteristics of the ancient village communities of primitive periods. The borough of Lauder in Scotland possesses common land of about 1,700 acres. There are also within its limits 105 portions of land, called *burgess acres*.

[1] Mr Blamire, who, in his capacity of commissioner for the commutation of tithes, had a perfect knowledge of the rural condition of the country, mentioned these peculiarities at the time of the enquiry, in 1844, on the subject of the partition of commons. *Report of the Select Committee on Commons Inclosure, together with the minutes of evidence* (1844). The customs regulating the allotment of common pasture varied from village to village, but they can be reduced to two main systems. 1. Where they are divided into as many lots as there are inhabitants entitled, which are then assigned by lot. 2. Where the allotment is permanent, and each person entitled, occupies, by means of a regular system of rotation, all the parcels successively one after another, to gather in the hay. These two classes are called respectively *lot meadows* and *rotation meadows*. According to Mr Blamire, the same system was also applied to arable land, with this difference, that the usufructuary occupied the same lot during the three successive years of the triennial rotation of crops, and not merely for one year.

Whoever owns one of these portions is entitled to the enjoyment of a one-hundred-and-fifth part of the common land. A seventh part of the cultivable area is submitted each year to the plough, and for this purpose divided among the owners of the 105 *burgess acres*. The portion of land to be tilled is first decided on: it is then divided into parcels which are assigned by lot among the persons entitled. The common council, having improved the upper lands by means of roads and draining, impose a special tax on them and direct their cultivation. The portion of common land which is not in cultivation becomes pasture, on which each burgess has the right of sending two cows and fifteen sheep. As Sir H. Maine remarks, we have here an archaic type of a village community, in which cultivation is transferred from one portion of the land to another, and the shares are decided by lot. Before the Scotch villages sold their common property this rural organization was frequently met with. To make a portion of the soil, their collective property, pass successively into the hands of each family, must have been a very general custom in England as late as the sixteenth century: for the Puritan emigrants on the other side of the Atlantic carried it there with them. Permanent grants were made of the land intended for arable: but the meadows remained common property, and were divided again each year, like the *lot meadows* and *lammas land* of the mother country[1].

Sir Walter Scott, visiting the Orkney and Shetland isles with the light-house commissioners, was struck with the form of property called *udal tenure*, which he observed there. He speaks of it in his notes and in his novel of *The Pirate*. All the domain of the *townships* was the common property of the inhabitants: the arable was divided among them: the heath and moor were left as common pasture for the cattle. In *The Monastery*, the great Scotch novelist describes the rural organization of the small communes of his country as they existed anciently, resembling, he tells us, those of the Shetland isles. The inhabitants always rendered one another mutual aid and protection. They possessed the soil in common; but to culti-

1 "When the English Puritans colonized New England, the courts of the infant settlement assigned lands for cultivation and permanent possession, and apportioned from year to year the common meadow-ground for mowing." Palfrey, *History of New England*, Vol. I. p. 343.

vate it they divided it into lots, which were occupied temporarily as private property. The whole corporation took part equally in agricultural labours, and the produce was divided, after the harvest, according to the respective rights of each. The more distant lands were cultivated in succession, and then left until vegetation grew again. The flocks of the inhabitants were driven to the common pasture by a shepherd, who was an officer of the commune at the service of all its members.

In the eyes of the Germans, as of all primitive nations, property in land, or rather the right to occupy a portion of it, was an indispensable attribute of freedom. Several economists have propounded the same idea. Without property there is no real freedom, says M. Michel Chevalier. The free man should be able to subsist on the fruits of his labour; and, as the only labour which can procure him the means of living is the cultivation of the land, a portion of land should be assigned to him. To allow him to lose this portion, or to refuse it to a newly-formed family, would be to take away their means of existence, and to condemn them to sell themselves into slavery. The only plan, then, of ensuring a constant means of existence and independence to all the families of the tribe, was to effect a new division of land among them from time to time; and, as all had an equal right, the only mode of assigning to each his portion was by lot.

Freedom, and, as a consequence, the ownership of an undivided share of the common property, to which the head of every family in the clan was equally entitled, were, then, in the German village originally essential rights, inherent, so to say, in one's personality. This system of absolute equality impressed a remarkable character on the individual, which explains how small bands of barbarians made themselves masters of the Roman empire, in spite of its skilful administration, its perfect centralization, and its civil law, which has received the name of written reason. How great is the difference between a member of one of these village communities and the German peasant, who occupies his place to-day! The former lived on animal food, venison, mutton, beef, milk and cheese; while the latter lives on rye-bread and potatoes; meat being too dear, he only eats it very rarely, on great

holidays. The former made his body hardy and his limbs supple by continual exercise; he swam rivers, chased the wild ox the whole day through in the vast forests, and trained himself in the management of arms. He considers himself the equal of all, and recognizes no authority above him. He chooses his chiefs as he will, and takes part in the administration of the interest of the community; as juror he decides the differences, the quarrels, and the crimes of his fellows; as warrior, he never lays aside his arms, and by the clash of them signalizes the adoption of any important resolution. His mode of life is barbarous in the sense, that he never thinks of providing for the refined wants begotten by civilization; but he brings into active use, and so develops all the faculties of man; strength of body first, then will, foresight, reflection. The modern peasant is lazy; he is overwhelmed by the powerful hierarchies, political, judicial, administrative, and ecclesiastical, which tower above him; he is not his own master, he is an appanage of society, which disposes of him as of its other property. He is seized by the state for its brigades; he trembles before his pastor, or the rural guard; on all sides are authorities, which command him and which he must obey, seeing that they arrange all the strength of the nation so as to enforce his obedience. Modern societies possess a collective power incomparably greater than that of primitive societies; but in the latter, when they escaped conquest, the individual was endowed with far superior energy.

The dwelling-house of the freeman is called in the Latin of ancient documents *curtis, hoba, mansus,* and in the German dialects *hof, hube, tompt, bool.* The undivided portion of arable land appendant to it was commonly designated by the term *pflug,* or plough, being the extent that could be tilled with a single plough. As this portion was destined to supply the wants of a family, it was larger in extent according as the land was less fertile. Thus in the region of the Rhine and the Lahn, it was 30 *morgen* (the *morgen* being rather more than half, or about six-tenths of an acre); in the neighbourhood of Trèves 15 *morgen,* in Odenwald 40, and in Eifel 160. The whole parcel was also called *mannwerk,* or that which a man tills for his support.

The passage in which Tacitus says of the Germans, *colunt discreti ac diversi ut fons, ut campus, ut nemus placuit,* led to the belief that they dwelt in isolated houses in the midst of fields belonging to them, whereas in the Roman empire the inhabitants arranged their dwellings side by side, in villages. At the present day, however, it is generally allowed that the Germans also grouped their houses together, but surrounded each with an orchard or garden[1]. Isolated farms are hardly to be met with in Germany, except in the north-west, and there they are of recent origin. Everywhere else the houses are collected in a group occupying the centre of the domain. The village, called *boel, by* in the north, *dorf, torf* in the centre and the south, was surrounded by an inclosure, often a quickset hedge, with self-closing gates, such as one commonly sees on the upper pastures of Switzerland. The Saxon villages of Transylvania maintain the same arrangement to the present day.

In Germany, as in Russia or India, the village community was based on family relations due to a common origin. Like the Scotch clan, or Roman *gens,* the inhabitants of the *dorf* preserved the tradition of descent from a common ancestor. In northern Scandinavia, where Danish savants have found so many traces of primitive agrarian organization, the land was originally cultivated by groups, the name of which indicates the most intimate relation: they are called *skulldalid* and *frandalid,* associations of friends. Members of the mark community bear the name of *Markgenossen, Cummarchani,* or *Beerbten;* this last name is significant, it means those who take part in the inheritance. The free citizen was never *disinherited;* he had an indestructible right to a proportional part of the common patrimony. The ancient family group, which constituted the social unit among nomadic nations, was preserved after the tribe had settled on the soil to devote itself to agriculture. As a result, the community exercised a right of eminent domain, even over what was private property. No one could sell his property to a stranger without the consent of his associates, who always had

[1] Tacitus, in fact, in the same passage, mentions villages, *vici;* he could not, then, have been alluding to dwellings scattered over the country. The entire passage is: *Colunt discreti ac diversi, ut fons, ut campus, ut nemus placuit; vicos locant non in nostrum morem, connexis et cohærentibus edificiis; suam quisque domum spatio circumdat.* GERM. c. XVI.

a right of preemption[1]. The portion of the common land reserved for the pasturage of cattle was the *mark* or *marke, marca* in the Latin of the middle ages. As pasture composed far the greater part of the territory, this term was applied also to the whole mass of arable land, waste or forest. When a tribe occupied a valley, it was the whole of this that constituted the *mark*. Countries, too, where colonies were formed, on the borders of the German territory, were also called *marken*. Thus Austria and Carinthia were *marken*. This is the origin of the title *marquis*, the *markgraf*, or chief of the mark. The word *gau* had nearly the same import as *mark:* it is found as a termination in the names of a great number of districts, whose chiefs were *Gaugrafen*, or counts of the *gau*.

The limits of the *mark* were indicated by stones, stakes or trees planted with great ceremony. According to a strange custom, still maintained in Bavaria and the Palatinate, children were brought as witnesses, and were beaten, that the recollection of this act impressing itself upon their minds in a lasting manner, they might at a later time be able to give evidence of it[2]. Once or twice in the year the inhabitants of the *mark*, or *markgenossen* (*commarchani*), assemble and solemnly visit the boundaries of the mark, and restore them when they have been removed or displaced. This visit, made on horseback, assumed in later days a religious character. A procession went round the fields, which were blessed by the priest; altars were erected near the boundary-stones; the monstrance was placed upon them, and mass said. The ancient custom of a heathen age survived, but assumed an entirely different form. The fate of many mythological traditions was the same.

Among the Germans, as among the Hindoos, juridical and economic relations were very scanty. Testamentary disposition

[1] Von Maurer quotes a curious text, which shews that in conquered Gaul Germans and Gallo-Romans formed an agrarian community, resulting from common possession of undivided land, in which the Gallo-Roman had a right of preference. *Terram quam Burgondio venalem habet, nullus extraneus Romano hospiti præponatur, nec extraneo per quodlibet argumentum terram liceat comparare.* Lex Burg. tit. 84, c. 2.

[2] The same is the practice in Russia; see Mackenzie Wallace, *Russia*, v. II. The reader will recognize this custom as identical with the practice in English parishes of "Beating the Boundaries," which phrase correctly expresses the form the custom has assumed with us. For, instead of being themselves the victims, the children are armed with wands, with which they belabour the parish boundary marks.

was unknown in Germany, as in India before the English conquest. Succession only applied to the dwelling-house, with the appendant inclosure, and this passed to the eldest. The brothers in many cases remained with him, thus forming a patriarchal family dwelling under the same roof. Sometimes they constructed separate habitations in the same inclosure for the brothers who married. The women had no right of succession. M. Hanssen, who was one of the first to throw light on this subject, asserts that in Denmark five or six families often lived together on the same farm. It is the same family group which we find in France in the middle ages, in Mexico in times past, and in Lombardy even at the present day.

Originally at Rome, as well as in Germany and India, the *paterfamilias* could not dispose of the family property by testament. The clans dwelt in houses grouped together into a village: this was the *vicus* or *pagus*. The aggregation of clans formed the nation (*populus*), and the state (*civitas*), which had in its centre a fortified place or citadel, nearly always situated on an eminence. In Greece a very similar organization is met with. The method in which the institutions of legislators and the treatises of philosophers deal with property, shifting it and dividing it again without scruple, shews that the recollection of a periodical partition of land had not been effaced. In Crete, according to Aristotle, all the families lived by means of public meals, on the produce of the land cultivated by serfs or *periœci*. There was, in fact, the system of common ownership applied to the land[1].

During the middle ages the right to a share in the collective domain gradually ceased to be a personal right, and became a real right, a mere dependence on habitation. Only the owner of an entire farmstead (*Hube, Hoffstatt*) had a whole share in the *mark;* he was a *vollhufner, vollmeier*. Side by side with this class, we find "half-tenants" (*halbhufner, halbmeier*), who consequently had only a half or quarter of an entire share in the enjoyment of the communal property. Then there were the *hintersassen*, or settlers, who had been allowed on sufferance to stay on the collective territory, or else on private domains, and had no right of enjoyment except by paying an indemnity

[1] See Mommsen, *Rœmische Geschichte*, Vol. I. p. 183.

(*holzgeld*, *viehgeld*). The descendants of houseless members of the *mark* became like the *hintersassen*, mere proletarians, with neither lands of their own, nor rights over any. The right of enjoyment in the fields, wood, meadow and water, was sold as an appendage of the *hube*. *Hoba cum omnibus utilitatibus ad eamdem hobam rite attinentibus id est marca, silva, sagina, acquis, pascuis*[1]. In this way the German commune gradually lost its character of democratic equality, but traces of the old principle of the land being the common property of all, appear in the custom by which the alienation of land could only take place in the assembly of the people[2], like the quiritary sale by *mancipatio* at Rome. Throughout the middle ages the sale could only be effected by the intervention of the communal magistrates: the seller surrendered to them the property, which they subsequently transferred to the purchaser[3]. This was in recognition of the eminent right of the commune over its territory.

[1] Mone, *Zeits. für Gesch. des Oberrheins*, Vol. I. p. 391, and Von Maurer, *Gesch. der Dorfverfassung*, and *Gesch. der Markenverfassung*, *passim*.

[2] The law of the Ripuarian Franks (sixth century) runs: c. 59, § 1: *Si quis alteri aliquid vendiderit et emptor testamentum* (i.e. instrumentum) *venditionis accipere voluit, in mallo hoc facere debet.*

[3] As the representative of the members, who formerly granted them their parcels, the mayor, on a transfer of property, received and re-granted the land, as represented by the branch and clod, *ramo et cespite*. See Vanderkindere, *Notice sur l'origine des magistrats communaux*, p. 40, and the chapter in this volume on *Common Lands in Belgium*.

CHAPTER VIII.

THE AGRARIAN SYSTEM OF THE IRISH CELTS.

THE little knowledge we possess of the customs of the primitive Celts, seems to shew that the same institutions existed originally among them as among other nations,—joint property, and even community of wives, and cannibalism[1]. Professor Sullivan, who has devoted his life to the study of the ancient Celtic laws, allows that in early times no one had a right of usufruct in the soil, except by consent of the clan, and that a fresh distribution was made every year. At the much more recent period, with which the *Brehon Laws* make us acquainted, the social organization of Ireland resembled that of India, and of modern Servia. The population was divided into clans or tribes (*fine*), the members of which claimed to be connected by descent from a common ancestor. At the head of the clan was a chief, whom Irish traditions call a king. When the clan was numerous, it was subdivided into groups, each united by closer ties of kinship, and also having a chief, called by Anglo-Irish jurists *caput cognationis*. These groups corresponded to the Roman *gens*, and the Greek γένος; and to the *cognationes hominum* of Germany, amongst whom, Cæsar tells us, the soil was redistributed every year[2]. The

[1] Mr Cliffe Leslie quotes the following important passage of St Jerome, concerning two ancient Celtic tribes, the Scoti and Atticotti:—*Scotorum natio uxores proprias non habet, sed ut cuique libitum fuerit pecudum more lasciviunt. Ipse adolescentulus vidi Atticottos, gentem britannicam, humanis vesci carnibus.*

[2] *De Bell. Gall.* VI. 29. The same social organization was found among the Scotch as among the Irish. Mr Skene, in his book, *The Highlanders of Scotland*, quotes the evidence of an English officer in 1730. "The Highlanders are divided into tribes or clans under leaders or chieftains, and every clan is subdivided into 'stocks' likewise subject to chieftains. These 'stocks' are again

juristic and political unit in the social order was not, as at present, the isolated individual, but the family group called the *sept.* This was precisely similar to the *Zadruga,* the family community, which the Germans appropriately call *Hauskommunion.* The *sept* also resembled the family groups, the societies of *compani* or *Frarescheux,* the "coteries" and "fraternities," which in the middle ages in France lived in one large building, *cella,* tilling the land in common and dividing its produce, living "*au même pot*" and "*au même chanteau.*"

Modern India affords us, in its joint-family, the exact image of the Celtic *sept* of ancient Ireland. The joint-family is a juristic person, which holds and acquires property and has a perpetual existence, like a society in mortmain. It presents a perfect type of the archaic mode of joint occupancy which we meet with in all primitive agricultural societies. It consists of an association of all the persons who would have taken part in the funeral ceremonies of the common ancestor; and is the agnatic family of the Romans, comprising all those who would have been subject to the authority of the common ancestor, were he alive to exercise it. According to the decisions of the Indian courts, no member of the family can claim a share of the common property. The produce has to be brought together, and then divided among all according to the rules of joint-ownership. The members of the family are united, as they say in India, "for maintenance, religion, and the soil." In Ireland the joint responsibility of the members of the *sept* is complete; they are bound to pay the composition for all offences committed by any member. The resemblance between the Hindoo and the Irish joint-family extends even to details. By the Brahmin law, whatever a member of the community gains by any special scientific knowledge, or by the exercise of the liberal arts, belongs to him in several ownership, unless he acquired his knowledge at the cost of the family. One of the old treatises on the Irish laws, the *Corus Bescna,* establishes

divided into branches of the same race, which contain fifty or sixty men related by common descent."

For the Brehon Laws see *Ancient Laws of Ireland,* published under the direction of the Brehon Laws Commission, and Sir Henry Maine, *Lectures on the Early History of Institutions.*

the same distinction. A member of the tribe may give the church two-thirds of what he gains by a liberal profession,—it is different, however, if the profession be that of the tribe itself. In this case the emolument belongs to the community.

The tribe, at the date of the *Brehon Laws*, is a civil person, which, as the texts say, "is self-supporting." It is perpetuated, in the first instance, by the possession of land, "the land is a perpetual person." But it can also exist without cultivating the soil, by the exercise of some trade. A portion of the tribe's domain, probably the arable, is divided among the different families of the clan; but these parcels still remain subject to the control of the community. "Every one," says the law, "shall preserve his land intact, neither selling it, burdening it with debts, nor giving it in satisfaction of crimes or contracts." As in all primitive customs, alienation is only allowed with the consent of the whole community: in India this is still the rule[1]. The necessity of following the same rotation of crops—the German *Flurzwang*—is as strict here as in the Russian *mir*, or the ancient German village. This, with marriage, says the *Corus Bescna*, is one of the fundamental institutions of the Irish nation. The statement of Tacitus with regard to the Germans, *apud eos nullum testamentum*, is as true of the Irish Celts as of all primitive peoples. Gifts and legacies were borrowed from the Roman Law of the clergy, that the pious might be allowed to enrich the church for the salvation of their souls.

The agrarian system of Ireland, at the time of the *Brehon Laws*, shews us the state of transition between the primitive collectivity and private ownership. At the period of the *Brehon Laws*, the whole territory of the tribe is still regarded in theory as belonging to the whole community; but, as a matter of fact, a very considerable portion of the soil has been permanently appropriated by certain families.

There are, however, very extensive common lands, covered with grass and heath, which serve as pasture for the cattle. Portions of the communal domain are cultivated in turn,

[1] "The alienation of landed property," says Sir G. Campbell, "is very rare, and the village community has a right of *veto*." (*Systems of Land Tenure*, p. 166.) See also for the *droit de retrait*, the curious work of M. Viollet, *Caractère collectif des premières propriétés immobilières*, p. 30.

according to the practice still in force in many countries, and especially in the Belgian Ardennes: the occupancy is, however, only temporary, and the ownership still remains in the tribe. The system of periodic redistribution, with alternate occupancy, is still maintained under the form of *rundale*[1]. A great part of the soil was subject to methods of tenure and agrarian customs, strongly impregnated with traditions of the old joint ownership. At the time of the *Brehon Laws*, private ownership had hardly been evolved from the primitive community of the soil. An Irish manuscript of the twelfth century, the *Lebor na Huidre*, has preserved the memory of this transformation, and indicates its cause, as an economist might do. It contains this curious passage: "Round the fields there was neither ditch, hedge, nor stone wall, and the land was not divided until the time of the sons of Aed Slane. It was in consequence of the great number of families at this time, that divisions and boundaries of the soil were introduced in Ireland." This is, in truth, one of the chief causes which give rise to private property. When the number of co-partners becomes excessive, the lot which accrues to each in the common domain is too slender for the "extensive" agriculture which they practise. They have to adopt a mode of cultivation which demands permanent improvements and the sinking of capital in the soil; and this cannot be done without the guarantee of hereditary possession, or, at any rate, of a very considerable term. Hence arises several occupancy, of permanent duration, and trans-

1 The word *rundale* is said to come from the Celtic *roinn-diol*, which signifies a share in the distribution, or the portion of one member. Under the *rundale* system, a certain portion of land was occupied by a group of families. (George Sigerson, *History of Land Tenures in Ireland*, p. 161.) The pasturage and bog were subject to joint occupation, and the arable, divided into holdings, passed periodically—sometimes as often as every year—from one family to another. Other traces of the *mark* system were also frequently met with; the arable was divided into three zones of different qualities, and every family had one or more lots in each zone. (See *Wakefield's Account*, Vol. I. p. 260, and Sigerson *loc. cit.*) Quite recently the same agrarian system was to be found in the Scotch Highlands. Sir H. Maine states, that in the Western Highlands, village communities, which have been recently dissolved, used to divide the land periodically among the inhabitants by lot. Mr Skene, who is of great authority on this subject, expresses an opinion that this agrarian system once prevailed generally among the Scotch Celts. (See his note on *Tribe Communities in Scotland* in the second volume of his edition of *Fordun's Chronicle*.) Co-operative societies, "*knots*," for agricultural purposes were established among kinsmen and also among strangers; and, according to Mr Sigerson, results were thus obtained, which isolated families could never have arrived at.

missible within the family. The periodic partition, every year or every three years, evidently allows of only a rudimentary cultivation, which consequently produces little, and so requires a large extent of ground.

In another Irish manuscript, older than the *Lebor na Huidre*, and bearing the title *Liber Hymnorum*, a method of occupying the soil is mentioned, which exactly recalls that which is still in force in the Swiss *Allmends*. There is a periodical allotment to each family of a share in the bog, the forest and the arable. The *weide, wald und feld* of the Germanic *mark* correspond exactly to the bog-land, wood-land, and arable-land of the Celtic tribe. The *Liber Hymnorum* (probably of the eleventh century) contains the following passage: "Very numerous were the inhabitants of Ireland at this time (the time of the sons of Aed Slane, from the year 651 to 694), and their number was so great that they only received in the partition three lots of nine 'ridges' of land, namely nine ridges of bog-land, nine of forest, and nine of arable." Every family in the Swiss *Allmend* receives, in the same manner, certain parcels in each of the zones of the communal domain. This passage of the *Liber Hymnorum* clearly shews that it was the increase of the population which put an end to the periodic re-distribution of the collective property. Tacitus, describing the customs of the Germans, also shews the close connection that exists between extensive cultivation and the temporary occupation of the soil. "The extent of their fields," he tells us, "facilitates these partitions;" and he adds, "They do not labour to contend with the fertility of the soil, which bears nothing but corn: every year they change the part for cultivation, and some always remains unoccupied."

The system of succession in force among the Irish Celts, called by English jurists *gavelkind*, resembles that which is still to be found in the family communities or *Zadrugas* of Servia. When a member of the *sept* or Irish clan dies, leaving property, the chief makes a new distribution of all the lands of the *sept* among the different households, who thus obtain a larger number of parcels[1]. Succession in the direct line is accordingly still

[1] The word *gavelkind* comes from *Gabhail-cine*, which denotes "accepted from the tribe." It refers therefore to the partition among the members of the

unknown: the collective succession of the clan is the system in force, and women are entirely excluded. The Irish *gavelkind*, it will be seen, is quite different from the *gavelkind* customary in the county of Kent. The latter merely enjoins the division of the inheritance in equal parts among the children, as in the French law. If we wish to form an idea of the agrarian organization prevailing among the Irish Celts at the time of the *Brehon Laws*, we must look for its type, not in the village communities as still existing in Russia or Java, but rather in the system of family communities, such as are to be seen among the French peasants of the middle ages, or the modern Servians. The Irish *sept* is almost exactly similar to the Slav *Zadruga:* the primitive community has given way to the family property of the *gens*. There is however one very great difference to notice. In Ireland the chief of the *sept* has already acquired the authority and privileges of a feudal lord, whereas in Servia an aristocracy is not yet developed, and the democratic equality of primitive times is maintained.

sept. This system of succession was in force as late as the time of James I. Sir John Davis, the attorney-general at the time, thus speaks of it at the commencement of the seventeenth century:—

"Issint les terres de nature de gavelkind ne fueront partibles enter le prochen heires males de cesty qui morust seisie, mes enter touts les males de son sept en cest manner. Le canfinny, ou chief del sept (this is the *caput cognationis*), fesait toutes les partitions per son discretion. Cest canfinny, apres le mort de chescun tertenant que avait competent portion de terre, assemblait tout le sept, et aiant mis touts lour possessions en hotchpotch fesait nouvel partition de tout: en quel partition il ne assignait a les fils de cesty que mourust le portion que lour pere avait; mes il allottait al chascun del sept solonque son antiquity. Et issint per reason de ceux frequents partitions et removements ou translations des tenants del un portion al auter touts les possessions fueront incertaines, et le uncertainty des possessions fuit la verey cause que nul civil habitation fueront erected, nul enclosure ou improvement fuit fait du terres." Davis, Reports, *Le irish custome de Gavelkind.* We can see here the struggle commencing between economic ideas and the archaic forms of property.—*Hotchpotch*, the Flemish *Utsepot*, is the Spanish *Olla podrida*, a mixture of various meats and vegetables.

CHAPTER IX.

AGRARIAN COMMUNITIES AMONG THE ARABS AND OTHER NATIONS.

THE agrarian system of Algeria strongly resembles that of ancient Germany, because the Arabs have arrived at very much the same point in economic evolution as the Germans had in the time of Tacitus.

We find a pastoral tribe, cultivating the soil subsidiarily, and on the threshold of the agricultural system. There is this difference, however, that the Arabs have remained at the same point from the commencement of history, while the Germans have arrived at individual property and intensive cultivation. In Algeria the agrarian systems vary considerably. In Kabylia the fields are marked out, and in many cases enclosed with hedges: there are regular and very minute titles to property, which mention even the number of trees. of every kind comprised in the inheritance. In the oases planted with palm-trees we also find individual property. According to Mussulman theories the soil belongs to the sovereign, but in fact the eminent domain resides in the tribe. The portion of each family, *mechetas*, remains undivided between the members who cultivate it in common and divide the produce. A partner may sell his share; but the other members of the family have the right of *cheffa*, that is to say, of reclaiming the portion sold on tendering the price. This is the *retrait-lignager* formerly in force throughout Europe, which is found in the village communities of every country. In certain tribes, especially in the Constantine district, the lands are re-divided annually by the sheik: in others, the families retain them, but without power

of alienation. The lands are divided into lots called *djebdas*, corresponding to the area which a pair of oxen can till, that is to say from seven to ten *hectares*, or from seventeen to twenty-four acres. Mussulman jurisprudence recognises four classes of property, that of the State, *blad-el-beylick;* that of religious corporations, *blad-el-habous*; that of private individuals, *blad-el-melk;* and finally that of the communities, *blad-el-djemâa*. This last class of property corresponds to the German *mark*[1].

When the Arabs created the system of irrigation in Spain, they also established institutions of collective administration for the distribution of the water, very similar to those which we find in the German *mark* for the administration of the forest. The regulations of the *acequia* of Quart, near Valence, dating from the days of the Moors, but enacted afresh in 1350, established the following organization. All, who were entitled to share the water, assembled in a *junta* in the spring of every second year. The *junta* framed rules, and nominated the syndic, the eight *electos* and the judge (*contador*). These elected officers formed the ordinary *junta*, and had executive

[1] The Turkish dominion in Algeria comprised 40,000,000 *hectares*:—14,000,000 in Tell, 26,000,000 in Sahara.

In Tell, 1,500,000 *hectares* form the dominion of the state, as *beylick* property; 3,000,000, comprising forest, waste-land, steppes, brushwood, rocks, river and torrent beds, and ravines, were the reputed property of the Mussulman community (*Bled-el-Islam*) because they had not been the object of any individual, family, or collective appropriation.

5,000,000 *hectares*, called *arch*, were appropriated to the tribes, by title of joint occupancy.

3,000,000 *hectares*, called *melk*, of traditional Roman origin, might be held to constitute private individual property.

1,500,000 *hectares*, also, *melk*, of Mussulman origin, were only family appropriations, over which a paramount claim was reserved to the sovereign.

In the Sahara, 3,000,000 *hectares*, of *oasis* or *kesour*, gained by the labour of man from the desert, were private property, conformably to mussulman law, as waste lands brought under cultivation.

23,000,000 *hectares* of common land, especially the *alfa* districts, were classed among the property of the mussulman community, in default of reclamation, or individual, or collective appropriation.

With the exception of 3,000,000 *hectares*, held by the independent Kabyles as private property, acquired or preserved from the Roman period, and of 3,000,000, also held in private ownership by the Oasians and Kesourians, as waste lands reclaimed, the Pasha of Algiers, in 1830, disposed of an uncontested and almost incontestable right over the remainder of the soil of Algiers. By the Senatus-consult of 1863, the Emperor renounced all these rights, characterising them as "obsolete;" and declared the tribes and *douar* communities to be the proprietors of the lands they held, whatever their title, without power of alienation. (See Report of M. Warnier, Algerian deputy in the National Assembly, 1873, and *La Propriété en Algérie*, by R. Dareste.)

and judicial authority. The syndic, who must be a cultivator, was nominated by the general assembly from a list of three candidates, prepared by the ordinary *junta*, in concert with the out-going syndic. He superintended the works, collected debts and fines, and submitted an account of his administration to the general assembly. Every Thursday, he sat before the porch of the cathedral with the *electos*, to try offences and disputes relating to the water. The *contador* examined the expenses, and received a remuneration. His authority was for an unlimited period, but was revocable. In the *huerta* of Valence, the tribunal or *cort* of *acequieras* was composed of the syndics of the seven *acequias*, which served for the irrigation of the *huerta*. This tribunal, called *cort de la Seo*, assembled before the cathedral,—or, in the time of the Moors, before the mosque,—every Thursday, and tried all offences and disputes touching the distribution of the water. The wisdom of the decisions of this tribunal, composed solely of peasants, was celebrated throughout Spain. This organisation of *acequieras* among the Moors, is exactly similar to that of joint-stock companies, or of the Anglo-Saxon Township. The associates are self-governing and their own judges; they administer their own concerns without restraint; they elect their officers, deliberate upon and frame laws. There is at the same time a combination of republican government with the parliamentary system[1].

Among many African tribes, the system of village communities is likewise in full force. Vice-Admiral Fleuriot de Langle tells us that among the Yoloffs of the Gorea district the soil is the common property of the villages. Every year the village chief, with the assistance of a council of elders, executes a re-distribution of the arable land, calculating the lots according to the wants of each family. It is precisely the same custom as we find in Java, and in Russia. In the midst of the Pacific Ocean, travellers have met with an identically similar social organization[2].

In Mexico, the nations were found devoted to agriculture, and living in villages which own the soil as common property.

[1] See *Voyage en Espagne*, by Jaubert de Passa.

[2] *History of Pelew Isles*, compiled from Journal of Captain Wilson by George Reade. (Quoted by Viollet, *Caractère collectif des premières propriétés immobilières*).

The dwelling-house and garden attached were the only subjects of private property. One portion of the domain was divided annually among the inhabitants; another portion was cultivated in common, and the produce applied to public purposes. In certain districts, not only the arable land but even the dwelling house was common property. "In New Mexico and in Arizona, among the Pueblo Indians, a state of society is found in which the characteristic feature is a mode of dwelling, quite unique in its nature. Imagine a vast building, of massive quadrangular form, consisting of three or four storeys, each storey being divided into small cells, containing separate families: in this singular construction, the whole community is concentrated. These villages are quite peculiar in their nature. The building, as a whole, bears some resemblance to some of the large edifices which are seen further South, such as the palace of Falenqué or the 'casa del Gubernador,' at Uxmal. These common buildings were in use at the time of the conquest, and there are still some found inhabited in several districts. The Pueblos possess a degree of culture very superior to that of the wandering tribes of the north, with whom they are constantly at war[1]."

"The most absolute communism," says M. Giraud Teulon[2], still prevails in some districts of New Zealand, of South America, of the Andaman Isles and Nicobar. If any one traverses the territories of the Centre and South of the United States, he will frequently meet with villages, which comprise only one or two houses, a hundred and a hundred-and-fifty feet in length, in which forty or fifty kindred families live together. The Minitarees and the Mandans live in polygonal buildings, in which several families are housed; and the long huts of the Indians on the Columbia River contain hundreds of persons. Certain Indian villages, such as Tumachemootool, in the Columbia valley, or Taas, in New Mexico, are solely made up of one or two colossal houses, rising to a height of five or six storeys, by a series of terraces, each of which in succession is built some way behind the former, and containing from three to four hundred persons. In the cañon of the Rio

[1] *Année géographique* (1873), by M. Vivien de Saint-Martin, p. 267.
[2] *Les origines de la famille*, p. 51.

Chaco, to the North-West of Santa Fé, there still exists a ruined group of seven *pueblos* or communal edifices, each of which was capable of holding seven or eight hundred people[1].

It was edifices of this nature that the first Spaniards often took for palaces, and which, in reality, were nothing but massive buildings filled with Indians, living in community. Mexico, Yucatan, and Guatemala, before the arrival of the Europeans, were occupied by numerous villages of this kind. The present Indians of these territories are the direct descendants of the indigenous population discovered by the Spaniards. Their civilization even now affords in some respects the spectacle of the transition from the nomadic to the settled mode of life.

Among the Aztecs, as among all the North American Indians, the *gens* is the primordial element of the tribe; and the confederation of tribes forms the nation. It is exactly the same with them as with the Germans or the Celts at the time of the Brehons. The rights and obligations among the members of the *gens* were the following:—a reciprocal right of inheritance or common possession of the landed property; a common burial place; joint responsibility for crimes; obligations of mutual assistance; election of the chief or *sachem;* and equality of all in the council. None of the Indian tribes has arrived at the notion of exclusive property as applied to the soil. The Iroquois constructed large houses, more than a hundred feet in length, which were inhabited by tén or fifteen families, living together in common on the produce of the chase. Caleb Swann, who visited the Creek Indians in 1793, remarks that the smallest of their towns contained thirty or forty houses, in groups of from five to eight; and in each group dwelt a clan, living and eating in common. Lewis and Clarke mention the same of the Columbian Indians. Mr Stephen says that in Yucatan these communities each contain a hundred labourers, who cultivate the land in common, and divide its produce among them[2].

Among certain tribes of Russian America, all the men live

[1] Morgan Smith's *Contrib. to Knowledge*, Vol. XVII. 254—258, 262, and 488.

[2] *Incidents of travels in Yucatan*, Vol. II p. 14.—These quotations with regard to the Indians are borrowed from an article by Lewis Morgan, in the *North American Review*, April, 1876.

in the same building[1]. Among the Caribbces, at the time of the discovery of their island, property and even produce were common[2];—all laboured and ate together. The same custom is found in the Aleoutian[3] islands, and among the Indians on the banks of the Orenoco[4].

In Peru, the soil was divided into three parts. One of these parts was devoted to the maintenance of religion; the second to that of the sovereign and government; and the third was divided among the cultivators. When a young man married, a house was built for him and a lot of earth assigned to him. A supplementary portion was given him at the birth of each child: the portion for a male child being twice as great as for a female. Re-distribution was executed every year in proportion to the number of members composing each family. The lands of the nobles, or *curacas,* were also submitted to partition; but they received a share in proportion with their dignity. As in Java, works of a permanent nature, requiring large expenditure of labour were executed in common by the inhabitants of the villages. This is how the irrigation canals, which struck the Spanish conquerors with astonishment, were dug; and also the terraces, arranged in steps, on the side of the hills, which allowed rich harvests to be obtained on steep and rocky slopes. Idleness was regarded as a crime, and punished as such. Mendicity was forbidden. All who could not labour received assistance; but every able-bodied man had to procure the means of satisfying his wants. Spanish historians tell us that ambition, avarice, and the appetite for change were all unknown. The labourers passed their lives in submission to custom, tradition, and authority. The gentleness of their character, and their passive obedience recall the character of the Russian peasant. The same institutions produce among all races similar results[5].

Among the ancient Britons, the land was common property, and a new partition of lands took place whenever the floods

[1] Von Wrangel, *Nachrichten,* p. 129.
[2] Edwards, *History, of the West Indies,* I. p. 42.
[3] Von Wrangel, p. 185.
[4] Depons, *Voyage, etc.,* p. 295.
[5] See Prescott's *Conquest of Peru,* where the contemporary evidences are well summed up.

carried away any portion of the domain. Among the Anglo-Saxons, conquered lands were the common property of the nation, whence it took its name *folkland*, or land of the people, *ager publicus* in opposition to private domain, or *bokland*, land inrolled in the book.

In the north of France, in Flanders, in Artois and in the bishopric of Metz, the marshy lands were also periodically divided among the joint owners. In Switzerland, the *allmends* were and still are common lands, sometimes divided among the inhabitants, and sometimes let for a rent which is divided among them. Among the Hebrews, the land was the collective property of the family, and was, in some degree, inalienable, as every fifty years property which had been sold was restored to its old proprietor.

In Wallachia, the land did not devolve by succession in families. It belonged to the State, the State alone having the absolute *dominium*. The soil was divided into two parts:—that of the *terrani*, and that of which the produce belonged to the Commune; this latter, the *ager publicus*, was cultivated by the labour of all in common. The *terrani* alone were entitled to the property of the commune; they had no ownership in it, but only possession. At the death of persons entitled, the family did not succeed; but the property returned to the collective domain, and was allotted afresh to occupiers. It was thus necessary to have recourse from time to time to a new partition. In course of time the strong usurped possession of the soil, and appropriated to their own purposes the labour of the peasants, in the form of *corvées*.

Among the Afghans, there is the same collective domain of the village, divided among the inhabitants by a periodic partition. Some of the customs are so similar to those of the Hebrews, that they have been supposed to be borrowed from that people. "The equal allotment of lands among the different families of a tribe is effected among the Afghans, just as we see it described in the last chapter of Numbers; and, in consequence, marriages are frequently contracted between members of the same tribe, to avoid alienating, by a foreign union, any portion of the common inheritance. Within the tribe exchanges of property are effected, by virtue of stipulations

entirely voluntary, in consequence of the unequal value of the lands granted to the several families. Every five or six years, according to custom, the lands pass from one hand to another; and, at the end of a certain lapse of time, each has occupied in turn the good and bad portions of the common soil. Hence arise emigrations of entire villages, after which the newly-occupied territory is divided among the settling families, by means of a new allotment which the Afghans call sometimes *pucha*, and sometimes *purra*. This last word is of Jewish origin, *pur* in Hebrew signifies a lot, or proportional part, whence the commemoration feast of Purim[1]".

M. Roscher also quotes many other examples of agrarian communities, *Feldgemeinschaft*[2]. It may be well to give them here. In the country of Lowicz, down to the beginning of this century, private property in land was unknown, arable land being subject to a new allotment each year[3]. In the island of Sardinia, also, collective property with annual re-partition of lots was to be found[4]. There is a similar system among the Creek Indians[5]. Among the Tcheremiss all agricultural operations are even executed in common, at a fixed time, no one being able to claim exemption. The harvests are subsequently divided among the families[6].

In certain districts of Norway, the partition of lands by lot had survived; but in 1821 was brought to an end by lands so divided being subjected to a double land tax[7]. According to John Mill[8], in certain parts of the province of Madras, arable lands were subjected to a new partition every ten years. Among the Cossacks of the Ural, an agrarian community exists in all its entirety. In Thuringia traces are still found of the old equal allotment according to families[9].

Throughout the whole of ancient Scandinavia the same system was in force. In Denmark, the collective communal

[1] See *La vie des Afghans*, by Forgues, *Revue des Deux-Mondes*, Oct. 1863; and Elphinstone, *Cabul*, II. p. 17.
[2] *System der Volkswirthschaft*, B. II. p. 190.
[3] Krug, *Geschichte der Staatswirth. Gesetz-Geb. Preussens*, I. p. 187.
[4] Schubert, *Staatskunde*, I. 4, p. 269.
[5] Wappaens, *Nord-Amerika*, p. 993.
[6] Von Haxthausen,—*Studien*, I. p. 443.
[7] Blom, *Statistik von Norwegen*, I. p. 143.
[8] John Mill, *History of India*, I. p. 343.
[9] Langethal, *Geschichte der deutschen Landwirthschaft*, I. p. 12.

property was maintained till nearly the end of the last century. As in the Swiss *allmend*, the soil was divided among the inhabitants in lots, but each lot contained several parcels, in order that every family might have lands of each quality and that no one might be unfairly portioned. Hence it happened that a cultivator had as many as thirty, forty, or even eighty parcels. Towards the end of the eighteenth century, under the influence of the ideas of individualism then prevalent, a series of laws were adopted with a view to putting an end to the collective possession. The law of April 23, 1781, abolished the system of community for arable lands; that of 1805 abolished it for the woods; and that of December 30, 1858, for the bog. The partition, called in Danish *Udskiffning*, was effected, by definitely assigning an equal part to every member of the commune. There no longer remain any common lands, except here and there a few peat bogs and a few pasturelands called *overdrevs*. Every cultivator may send on to the *overdrev* all the cattle which he keeps on his holding. The *allmenden*, or *alminding* in Danish, are no longer to be found, except in certain names. Thus, for instance, in the isle of Bornholm, there is still a forest called *Kongens Almind*[1].

Quite recently traces might still be found even of the labour being carried on in common. Thus Von Haxthausen says that, in Altmark, the heads of families assemble under the presidency of the chief of the commune, to decide on the work to be done by them all the next day[2]. The same custom also existed formerly in Jutland[3].

The numerous facts just quoted prove the existence of village communities with identically the same characteristics among the most widely different nations. If the juridical traditions and archaic agrarian institutions preserved in isolated districts were carefully studied in each country, there would undoubtedly be found supplementary proof even more complete, though not more decisive.

[1] For these details the author is indebted to a distinguished Danish economist, M. Aleksis Petersen, who has translated this work into Danish.

[2] Von Haxthausen.—*Ländliche Verfas*, I. 237.

[3] Hanssen, *Archiv der pol. Oek.*, IV. 408.

CHAPTER X.

THE GOLDEN AGE AND COLLECTIVE PROPERTY IN ANTIQUITY.

THE question, whether the ancient population of Greece and Italy also lived in village communities, and passed through a system of collective property in land, before being acquainted with individual ownership, seemed doubtful. Certain authors, such as Lange[1] and M. Fustel de Coulanges, think, that the Greeks and Romans had not traversed the primitive epoch, in which the soil was the common property of the tribe or village, as is now the case in Russia, and was formerly among the Germans and Slavs. In his excellent work, *La Cité Antique,* M. Fustel de Coulanges allows the existence of common property in the Roman family: but, he cannot find, either in Greece or Rome, collective property in the tribe. He can see "nothing in the village similar to the promiscuousness, so general in France in the twelfth century[2]. The populations of Greece and Italy, from the most remote antiquity, were acquainted with and exercised private ownership[3]." It would be very strange, if these two nations alone had not passed through a system, which, as we have seen, existed in primitive times among all

[1] *Römische Alterthümer* (1856), I. p. 108.
[2] *La Cité antique* (new Edition), p. 67.
[3] *La Cité antique*, p. 63. M. Fustel de Coulanges shews decisively that the dwelling-house and the land round it, containing the family tomb and altar, were private property; but this is also the case in Russia, Java, and the Germanic *mark*,—everywhere, in fact, where there is community of the soil, this latter system being only applied to the arable, forest, and pasture land. The *heredium*, or domain transmissible by hereditary descent, prevailed to the same extent in Germany. At Rome, it is beyond dispute that private property was very limited in comparison with the common territory, or *ager publicus*. See Mainz, *Cours de droit romain*, I. 119, 158.

other races. After the decisive treatise of M. Paul Viollet, on the *Caractère Collectif des Premières Propriétés Immobilières*[1], it is impossible to adopt the opinion of M. Fustel de Coulanges.

In Germany, Puchta in his studies on the Roman law[2], had already pointed out numerous traces of the eminent domain of the state over individual property; and Heineccius, in his treatise on Natural Law, *Elementa juris Naturæ et Gentium*, cap. IX. § 237, even enumerated populations living in common. Mommsen says, that, in primitive Italy, village communities owned collectively the territory in which they were settled.

"Since the arable land among the Romans was long cultivated upon the system of joint possession, and was not distributed until a comparatively late age, the idea of property was primarily associated not with immoveable estate, but with 'estate in slaves and cattle' (*familia pecuniaque*[3])." "The *mancipatio*, originally the universal form of purchase, dates from the time, when there was no property in land, for it is primarily applicable only to objects, which are acquired by grasping with the hand." "In the earliest times the arable land was cultivated in common, probably by the several clans; each of these tilled its own land, and thereafter distributed the produce among the several households belonging to it. There exists, in fact, an intimate connection between the system of common tillage and the clan form of society, and even subsequently in

[1] The author has borrowed considerably from M. Viollet's excellent work published in the *Bibliothèque de l'Ecole des Chartes*. It may be well to transcribe the note at the beginning of this publication, as shewing how, working from different points of view, and independently, the author as an economist, and M. Viollet as an archæologist arrived at the same conclusions. In this note, M. Viollet says:

"A fortnight ago I handed to our editing committee the first two chapters of the book now offered to the public, when there appeared in the *Revue des Deux-Mondes* (July 1, 1872) the first part of a study by M. de Laveleye on Primitive Property. M. de Laveleye's views are identical with mine; and for a moment I hesitated whether I ought to carry out my intention of publishing.

"I decided in favour of doing so, because, although we agree in our conclusions, there is little chance of our always selecting the same proofs. This agreement, moreover, if it existed, would render the argument more striking. I will add, that the third chapter of this essay is probably quite without the outline which M. de Laveleye seems to have traced for himself."

M. Viollet did collect a great many facts which had passed unnoticed, and which the author here reproduces in support of his position.

[2] *Cursus der Inst tut.* (1841), I. p. 129—134, II. p. 581.

[3] Mommsen, *History of Rome*, Bk. I. c. XI. p. 160.

Rome, joint residence and joint husbandry were, in the case of co-proprietors of very frequent occurrence. Even the traditions of Roman law furnish the information that wealth consisted at first in cattle and the usufruct of the soil, and that it was not till later that land came to be distributed among the burgesses as their own special property[1]. More reliable evidence that such was the case is afforded by the designation of wealth as "cattle-estate," or "slave and cattle-estate" (*pecunia, familia pecuniaque*), and of the special possessions of the children of the household, and of slaves as "lesser cattle" (*peculium*); also by the earliest form of acquiring property, the laying hold of it with the hand (*mancipatio*), which was only appropriate to the case of moveable articles; and above all by the oldest measure of land, the "lordship" (*heredium*, from *herus*, lord), consisting of two *jugera* (about an acre and a quarter), which can only have applied to garden-ground, and not to the hide. When and how the distribution of the arable land took place, can no longer be ascertained. This much only is certain, that the oldest form of the constitution was based not on freehold-tenure, but on clanship as a substitute for it, while the Servian constitution, again, presupposes the distribution of land[2]."

The *heredium* was somewhat larger than the private enclosure of the Germans, but two *jugera* not being sufficient to support a family, it was obliged to receive a portion of the common property of the tribe or state. This common property was the original *ager publicus*, enlarged from time to time by the conquests of the kings and the republic, and at a very early period usurped by the most powerful. We can understand how this usurpation gave rise to centuries of strife, which lasted to the time of the empire, between the patricians and plebeians. For the latter it was a question of existence. A group of families, forming the clan, inhabited a village, the *vicus* or *pagus*. The union of the clans formed the nation (*populus*) or

[1] Cicero (*de Rep.* ii. 9, 14, comp. Plutarch, *Q. Rom.* xv.) states: *Tum* (in the time of Romulus) *erat res in pecore et locorum possessionibus, ex quo pecuniosi et locupletes vocabantur.—Numa primum agros, quos bello Romulus ceperat, divisit viritim civibus.* In like manner Dionysius represents Romulus as dividing the land into thirty curial districts, and Numa as establishing boundary-stones, and introducing the festival of the Terminalia (i. 7, 2, 74; and thence Plutarch, *Numa*, 16).

[2] Mommsen, *History of Rome*, Bk. I. c. XIII. p. 193—195.

State (*civitas*); the central point of the State was a fortified place or citadel (*arx*), nearly always situated on a height. Ancient citadels of Etruscan cities, built of Cyclopean blocks, are still standing.

At the time when Roman history begins, the proprietorship of the commune had already given way to the joint proprietorship of the family (*gens*). This is the second phase in the development of property. We may see further evidence of the primitive collectivity of the soil, in the fact, that cattle served so long, both in Rome and in Greece, as the medium of exchange. In the time of Cicero, fines were still reckoned in heads of oxen and sheep, according to the ancient practice.

This is another curious feature in the manners of the primitive societies of the Aryan race. It is well known that among the nations of Græco-Latin antiquity, the sheep and ox were the medium of exchange and the common measure of value. In Homer, the value of things, of arms particularly, is estimated in heads of cattle. The etymology of the word *pecunia*, which signifies "riches", "money", and is obviously derived from *pecus*, leaves no doubt on the point. The first metallic coins bore the impress of an ox or sheep, of which they were a kind of representative symbol, just as the bank note now is of the coin currency. In northern languages we find similar etymologies and synonyms. The word *fâ*, *fe*, in Icelandic and Norwegian, denoted *riches*; in English the word denotes the reward of a service, *honorarium*. These words obviously come from *vee*, *vieh*, cattle. Cattle was, in fact, pre-eminently wealth, and afforded the best means of exchange. The Germans, who had settled near the frontiers of the empire, were acquainted with the use of money; those in the interior, Tacitus tells us, had recourse to barter for the exchange of their wares. Strabo says the same of the Dalmatians: "The use of money is unknown to them, which is peculiar to them alone of the nations in these parts; although they resemble many barbarous nations in this respect[1]." These barbarians, however, had a medium of exchange; but, as it was not metallic coin, historians assert that they were not acquainted with money. The tribute which the Frankish conquerors demanded of the van-

[1] Strabo, l. VII. c. VI. § 7.

quished Frisons and Saxons, consisted of a certain number of oxen. It is beyond dispute that cattle did serve as a medium of exchange; we even know that the respective values were six sheep for one ox at Rome, and twelve sheep for an ox in Iceland, and probably in Germany as well. The fact, however, always seemed strange. Still it may be easily explained, when we remember the agrarian organization of village communities; but except in this way it cannot be explained. The essential quality of the instrument of exchange, is that it should be useful to all, accepted by all, and should, consequently, circulate from hand to hand without impediment. It is for this reason that furs have served as money in Siberia, codfish in Newfoundland, blocks of salt or strips of blue cotton in Africa, tobacco in America during the war of independence, and postage stamps often among ourselves at the present day. In primitive communities, every family owns and consumes cattle: it is, therefore, in a position to pay it away and satisfied to receive it. As it may make use of the common pasturage, it will be in no way incommoded, if sundry sheep or oxen are given by way of payment, it will send them on the waste with the rest of its herd. By the agency of the herdsman, whose duty it is to drive to the pasturage the common herd of all the inhabitants of the *mark*, payments in sheep or oxen can be effected by the banking operation known as "*virement de parties*," which the London clearing houses have brought to perfection. If *A* owes *B* £1,000, and they have the same banker, payment is effected by mere entrance in a book: the £1,000 are taken from *A*'s credit, and carried to that of *B*. In the primitive community payment could be effected in the same way. If one man owed another ten oxen for a sword, he informed the herdsman, who took them from the debtor's herd and added them to the creditor's. The use of cattle as a medium of exchange, which seems general among Aryan nations, shews that before their dispersion they lived under the pastoral system; and economic history thus comes to corroborate the results at which comparative philology had already arrived.

At the time when the Greeks and Romans make their first appearance in history, they have reached a more advanced and more modern stage of civilization than that of the Germans in

Tacitus. They have long since abandoned the pastoral system; they cultivate corn and the vine, and live less on flesh: agriculture furnishes the chief part of their subsistence. There are still, however, very clear traces remaining of the primitive system of community. Thus cattle could not have been used as a medium of exchange, if the greater portion of the land had not been common pasturage, on to which every one was entitled to send his herds. The two customs are so closely connected, that we cannot conceive of one without the other. Given separate and limited property in land, and I can no longer accept oxen in payment; for how am I to keep them? If cattle serve as the medium of exchange, we may at once conclude that a great part of the soil is collective property. This system, accordingly, must have existed in primitive Greece and Italy.

Yet another proof of the existence of community in Greece and Italy is to be found in the universal tradition of a golden age, when private property was unknown. Generally nothing is seen in it but a mere poetic fiction; but, when once the incontestable facts of the economic history of mankind make us understand the necessity of this system, we are forced to admit that the ancient poets, in this as in many other points, were depicting a state of society, the recollection of which survived in their own time. We will quote some well-known passages from the Classics, which celebrate, in almost the same terms, the happy age when the earth, the common property of all, knew nothing of the limits traced and the boundaries set up by the quiritary law.

Listen to Tibullus, l. I., *Eleg.* 3:—

Quam bene Saturno vivebant rege priusquam
 Tellus in longas est patefacta vias!
Nondum cæruleas pinus contemserat undas;
 Effusum ventis præbueratque sinum;
* * * * * *
Non domus ulla fores habuit; non fixus in agris,
 Qui regeret certis finibus arva, lapis.

Ovid (*Metam.* 1. 135) expresses himself in similar terms:—

Communemque prius, ceu lumina solis et auras,
Cautus humum longo signavit limite mensor.

Virgil, *Georgics* I. 125, says;—

> Ante Jovem nulli subigebant arva coloni,
> Ne signare quidem aut partiri limite campum
> Fas erat: in medium quærebant; ipsaque tellus
> Omnia liberius, nullo poscente, ferebat.

"In the time of Saturn," writes the abbreviator of Trogus Pompeius, "was neither slavery nor private property: lands were common and undivided: and all men had, as it were, the same patrimony. This was the Golden Age so dear to poesy, the age of ease and happiness, and universal concord."

We evidently have here the popular tradition of a primitive epoch, anterior to the institution of private property.

Plato, in the third book of the *Laws*, describes well the characteristics of this primitive period, when the pastoral system prevailed exclusively. "Originally there was abundance of pasture from which men derived their chief means of existence. They thus wanted neither flesh nor milk." This is the exact image of the Germany of Tacitus' time, and the counterpart of Cæsar's phrase: *carne et lacte vivunt.* Plato also speaks of the equality of the primitive partition of the land, and he expresses the idea, common to all the politics of antiquity, that equality of conditions is the indispensable foundation of purity of morals, of virtue, and of liberty.

We also find in ancient historians passages which shew that, even in the world known to them and contemporary with them, the system of collective property had not entirely disappeared. Diodorus of Sicily tells how the inhabitants of Cnidus and Rhodes, flying from the tyranny of the Asiatic kings, arrived in Sicily about the fiftieth Olympiad. They joined the Selinuntians, who were at war with the Egesteans. They were conquered, and quitting Sicily landed in the Lipari Isles, where they established themselves with the consent of the inhabitants. In order to resist the Tyrrhenian, or Etruscan pirates, they constructed a fleet and adopted a social organization after this manner:—

"They divided themselves into two separate classes: one was charged with the cultivation of the soil of the islands, which was declared common property: to the other was entrusted the work of defence. Having thus put all their property into one lump, and

eating together at public repasts, the inhabitants of the islands lived in common for some years (καὶ τὰς οὐσίας δὲ κοινὰς ποιησάμενοι καὶ ζῶντες κατὰ συσσίτια, διετέλεσαν ἐπί τινας χρόνους κοινωνικῶς βιοῦντες); but subsequently they divided the soil of Lipari, where their chief town was; as for the other islands, they continued to be cultivated in common. Finally, they divided all the islands among them, in the same way, for twenty years; at the end of this term they again divided them by lot[1]."

Thus, at the time when Diodorus of Sicily wrote, that is to say, under the first Roman Emperor, private property in land was not yet completely established among the Greeks in the small Lipari islands: at the gates of Rome they practised the periodic partitions noticed in Germany by Cæsar and Tacitus. A curious point to notice is that the Suevi, according to Cæsar, acted in the same way as the people of Lipari: "Those who remain at home cultivate the soil for themselves and their absent countrymen; and themselves take arms in their turn the next year, while the others remain at home; for no one possesses land in separate ownership." M. Viollet thinks it beyond doubt that the system of collective property had left deep traces in Southern Italy, even in historic times. He says:—

"Might we not assert as much of some of the first settlers in Magna Græcia? It is a pure conjecture that we shall now offer, but conjectures should not always be neglected. Let us transport ourselves for a moment to Magna Græcia, and consult the biographies of Pythagoras, handed down to us from antiquity. We know that Pythagoras gathered together a number of disciples, who practised the system of community of goods. It is not to these small assemblages of persons that we would direct attention, for surely we may accept the testimony of biographers on this point, who regard the institution as the work of the philosophers, and as in no way connected with the historic origin of Magna Græcia. But there is another fact attributed to Pythagoras, which is more general, more important, and more difficult to understand. At the bidding of this eloquent personage, says a writer, more than two thousand persons adopted the system of community and organized a political order in Magna Græcia. More than this; if we consider the expressions of the historian, we may conclude that he is speaking of the actual origin of several cities of Magna Græcia[2]. Thus, according to the text, subsequently to the foundation of Rome, one, or even several towns in the South of Italy, was founded and established on the system of joint undivided property. This

[1] Diodorus, *Bibl. histor.* v. 9.
[2] Porphyri *Pythagoræ vita*, édit. Didot, Parisiis, 1850, p. 91.

is a social fact of great importance, attributed to a remote era which would have left but feeble traces in history. May we not, then, enquire whether an ancient tradition, concerning the origin of certain towns in Magna Græcia, may not have taken form in the later, half-legendary accounts of the life of Pythagoras? Under the name and protection of Pythagoras a very valuable historical tradition may thus have come down to us. A fact in confirmation of this idea, is that the passage of Nicomachus, quoted by Porphyrus, stands quite alone in the biographies of Pythagoras; everywhere else the disciples merely of the philosopher are mentioned, that is to say, an inconsiderable body of men, amounting at most to some six hundred persons. In an entirely different source we find a point, which is probably connected with what we are speaking of. It is with regard to the inhabitants of Tarentum, where the citizens seem to have retained something of the ancient community of the soil until the time of Aristotle. 'At Tarentum the common use of the soil is allowed to the poor; and by this means the allegiance of the mob is secured,' we read in the *Politics*[1]. Thus the town of Tarentum practised, for the benefit of the poor, a custom which recalls the periodic partition of land in the Lipari Isles. The custom is much better explained by history than by philanthropy; and we probably see in it a relic of remote antiquity."

Aristotle seems to have been acquainted with the two primitive forms of communtiy; that where the produce is gathered in common, and that in which the land is divided among the members. Thus, he says, "the fields would be separate property, while the harvest would be the common property of all. This custom is in force among some nations. Or else the soil might be common property, while the harvests were divided among all in several ownership. This kind of community is found among several barbarian nations[2]." Aristotle does not indicate very clearly the characteristics of the two systems which he is describing: but the first seems to belong to certain Greek cities, where the produce of individual lands was consumed in common at public repasts, while the second would be that of periodic partition of the common soil, such as we find it described in several ancient writers.

Diodorus of Sicily says that the Vaccæans, a Celtiberian tribe, "annually divide the land among them for cultivation, and then, bringing the produce together, give every one his share. The penalty of death is established against any cultivator infringing these dispositions[3]."

[1] *Politics*, l. IV. c. 3. [2] *Politics*, l. II. c. 3. [3] *Bibl. Histor.* l. v. c. 41.

Diodorus of Sicily[1] further relates, that, among the islands in the Arabian Ocean, along the coast of Arabia Felix, there are several worthy of mention. One is the island of Panchaia. In Chapter 45 of Book v. he explains the political and social organization of this island. He there says, among other things, that the population is divided into three orders (μέρη): the priests and the artisans (τεχνῖται) form the first, the cultivators form the second, the soldiers and shepherds the third. The priests are chiefs and judges of the inhabitants. "The cultivators till the soil, and afterwards bring the produce together in common. Whichever of them is adjudged to have tilled his portion the best, receives a choice part in the distribution of the harvest; the first, the second, and so on to the number of ten, being proclaimed by the priests to serve as examples." "No one, in short, is allowed to own anything as separate property, except a dwellinghouse and garden." This agrees with the agrarian system of Russia, of ancient Germany, and India[2].

Strabo, speaking of the Dalmatians, says: "The Dalmatians have a custom, peculiar to themselves, of making a new division of lands every eight years[3]."

M. Viollet sees in the custom of common repasts, *sussitia*, so general among all ancient nations, a remnant of the primitive community, and his conclusion seems to be correct. In fact, even now we find common repasts and common property, as we have seen, in Switzerland. The passage in which M. Viollet expresses his opinion on this point is so important that we will give it, as it stands.

"If the produce of the earth is consumed in common, it is because originally the soil was not regarded as the domain of an individual, but as the foster-mother of all mankind. 'They bring all their possessions into a single lump, and eat together in public repasts,' writes Diodorus of Sicily, when speaking of the inhabitants of the little Lipari Isles. In my opinion, these valuable lines reveal the origin of the public repasts to us. The custom springs from the community of lands; it is closely connected with it as effect with cause, and it even enables us to go further back still,

[1] *Bibl. Hist.* v. 41.

[2] Strabo and modern authors believe Panchaia to be a mere fabulous isle, and treat the subject as a fiction of Diodorus. This may be the case; but in describing the golden age, Diodorus was evidently describing the features of the agrarian system of the early ages. See *Evhémère*, by R. de Block, p. 51.

[3] Strabo, l. VII. c. 6, § 7.

beyond the establishment of the earliest fixed communities, to the wandering life of patriarchal families. The practice of public repasts was general in Greece and Italy. According to Aristotle, the Œnotrians, at the time when they abandoned the nomadic life for agriculture, received from their king Italus the institution of common repasts. The philosopher would have been more correct, had he told us that the Œnotrians, on becoming settled, preserved, instead of adopted, the institution of common repasts. For it is, in all probability, a relic of the nomadic life. The Opici, living on the Tyrrhenian coast, also ate at a common table; and, in the time of Aristotle (some four hundred years, that is to say, after the foundation of Rome), the Chonians on the coast of Iapygia, and the inhabitants of some districts of Bruttium and Lucania, remained faithful to the old tradition[1]. And every one knows how long this practice was maintained in the island of Crete[2].

"Among the Spartans the ancient public repasts left a double trace, alike on their laws and their manners. On the one hand, the legislator took hold of the old custom; he sanctioned and perpetuated it by formal commands, obliging all the citizens, including the kings themselves, to sit down at the same table; and on the other hand, the people retained a religious remembrance of these primitive customs; and, side by side with the *Sussitia*, or legal repasts, they had other meetings, entirely spontaneous, which preserved the old tradition in even greater purity. This popular repast of the Spartans, which is far less known than the official banquet, was called *Copis*. Athenæus has preserved the description given by Polemon, a writer of the second century before our era:—

> "When the Spartans celebrate the κοπίς, they begin by setting up tents near to a certain temple; they then make beds of grass, on which they stretch carpets, and there hold the banquet, all lying down. They entertain not only people of our country, but also travellers who are staying there. In these *copis* banquets they sacrifice kids, and no other animal. They give every one a portion of the meat, and also what is called the *physicillon*, that is, a small piece of bread like an *encridon*, but more spherical in form. They also give to every one present a fresh cheese, a slice of the paunch and fat intestine of the victim, and dessert of dried figs and beans. Every Spartan may give a *copis* when he pleases; but in the town they are only given at the feast called Tithenidia, celebrated for the preservation of infants. At this time the nurses bring the male children into the country to present them at the temple of Diana Coruthallis, situated near the river Tiassa, by the side of the grace Cleta. There they celebrate the *copis*, as we have just described it. They sacrifice on this occasion sucking pigs; and *ipnetes*, or baked bread, is served at the banquet[3]."

[1] Aristotle, *Politics*, l. VII. c. 9.
[2] See especially Athenæus, *Banquet des Savants*, éd. Dindorf, Vol. I. Lipsiæ, 1827, pp. 322, 323.
[3] Athenæus, Vol. I. pp. 314, 315, l. IV. § 16.

"Everything here is primitive; and we see the common repast in its ancient simplicity.

"In other countries also this tradition can long be recognized, though subject to much alteration. At Athens for instance, and in several Greek cities, the magistrates, and those who are distinguished for especial services, take their meals in the common hall, or *Prytaneum*[1]: and when a young man is newly admitted into the tribe, all the members partake of the sacred food with him[2]. At Rome, too, every *curia* had its banqueting-hall, and all the *curiæ* have a common hall, very like the *Prytanea* of the Greeks, says Dionysius of Halicarnassus[3]. May we not naturally refer all these recollections to the primitive custom of common repasts? Aristotle, struck with the great antiquity of the custom in Italy, concludes that it originated in this country, and thence passed to Greece[4]. Dionysius of Halicarnassus, on the other hand, after mentioning the public repasts of the Roman *curiæ*, recalls the Lacedæmonians, and concludes that Romulus borrowed them from the legislation of Lycurgus. Not so, however:—Romulus borrowed nothing from Lycurgus, as Dionysius supposes, nor did Greece copy Italy, as Aristotle would affirm. Alike in Greece and Italy, the custom of common repasts was established quite naturally,—or rather was maintained. In both countries it remained, as a lingering evidence of the old nomadic life[5], and the primitive community of the soil: in both countries religion and custom preserved the memento."

Aristotle eulogizes the common repasts as a means of maintaining equality:—"In Sparta and all Greece the legislator had the wisdom to base the community on the custom of public repasts." (Lib. II. c. 2.) "The common repasts of the Carthaginian Hetairies resemble the Lacedæmonian *phidities*." (Lib. II. c. 8.) "The establishment of these common repasts is generally regarded as applicable to every well constituted state. I am of this opinion myself, but it is necessary that every citizen, without exception, should take part in them. The expenses of divine worship are still a common burden of the state. The land, therefore, should be divided into two portions: the one for the public, the other for private individuals. The first portion will then be subdivided to meet the expenses of religion and of the common repasts." (Lib. IX. c. 9.) "The establishment of common repasts is quite as ancient; in Greece

[1] Athenæus, Vol. I. p. 402, l. v. § 2.
[2] Demosth. *Oratio adversus Macartatum*. Parisiis, Didot, 1845, p. 565.
[3] Dionysius of Halicarnassus, *Roman Antiquities*, l. II. c. 23.
[4] Aristotle, *Politics*, l. VII. c. 9.
[5] It is surprising that there is no chapter devoted to the common repasts in the work of Dorn Seiffen, *Vestigia vitæ Nomadicæ, tam in moribus quam legibus Romanorum conspicua*.

it goes back to the reign of Minos, and in Italy it can be traced to a still more remote period." (Lib. IV. c. 9.)

Not only is the primitive community preserved to us in traditions concerning the golden age and in certain radically communistic institutions, such as that of the common repasts; but it has also left its impress on the constitution, the laws, the manners and the ideas of antiquity. In Greece the individual is always sacrificed to the State, and political writers, like Aristotle and Plato, have continually in view the maintenance of equality of conditions, by imposing certain limits on individual activity, and especially on the accumulation of landed property in the hands of a certain number of persons. Great legislators, such as Lycurgus and Minos, are said to have based the constitutions attributed to them on a new division of property. The idea of regulating the distribution of wealth, so as to check excessive inequality, recurs at every moment in the writings of the ancients, and it is from them that Montesquieu and Rousseau have derived it. As M. Viollet correctly remarks, the origin of individual property is nearly always referred to an original division, effected on the footing of equality, which makes us suppose, that before this distribution the soil was collective property, or that it was at least thought to be so by those who related these facts. M. Viollet quotes a great number of these distributions noticed by ancient authors.

> "The tradition of this distribution is common among the Greeks: we meet it among the inhabitants of the Cyclades[1], of Tenedos, Lesbos and the neighbouring islands[2]. It also exists in Sardinia[3]; and it is to be found in the Peloponnese when overrun by the Dorians."

We may here remark that minute discussions have been raised with regard to the division of the soil by the Dorians[4]: it seems that we can separate history and legend on this point with considerable certainty. There was a nearly equal division of lands (*ἰσότητα τινά*) at the time of the Dorian invasion. This is the history of the matter, and we have evidence of the facts in Plato's *Laws*.

[1] Diodorus, v. 84. [2] Diodorus, v. 81, 83. [3] Diodorus, v. 15.

[4] See Thirlwall, *History of Greece*; Grote, *History of Greece*; Duncker, *Geschichte des Alterthums*.

But this distribution of lands has been attributed to Lycurgus, which is the legendary part of the account. Lycurgus, a semi-traditional personage, would thus have absorbed an anterior fact. This supposition is corroborated by the existence of a tradition, in other respects erroneous, which makes Lycurgus contemporary with the Heracleidæ, and by a critical conjecture of Timæus, who is compelled to assume the existence of two Lycurgi.

To return to M. Viollet:

"Aristotle mentions several countries, Locri in Magna Græcia[1], Thebes[2], Leucadia[3], in which the original number of properties were carefully maintained. This idea hardly admits of any explanation, but that of a primitive division: an explanation all the more probable, inasmuch as it can be verified with certainty, for a town that we have not yet mentioned,—Thurium. Here we have two distinct evidences: one, that of Aristotle[4], who mentions the usurpation of the lands by a small number of patricians in spite of the law forbidding such acquisitions; the other, that of Diodorus, who relates the early tradition of such a distribution[5]. This primitive tradition evidently explains the legislation to which Aristotle alludes. In Sparta, the tradition which we find presents a remarkable feature. Here there is not a mere division, but a division into equal shares, or at least, a distribution which involves a certain degree of equality (ἰσότητα τινά).

"We also find this recollection of equality among the Romans. Dionysius of Halicarnassus, Varro, Festus and Pliny, all furnish us with evidence, with regard to this people, of great interest and of indisputable historic value.

"According to Dionysius of Halicarnassus, Romulus divided each

[1] Aristotle, *Politics*. [2] *Politics*, II. 9.

[3] *Politics*, II. 4. As represented to us by Aristotle, these Greek laws as to the preservation of the original parcels seem to be connected with an aristocratic sentiment, and to have been generally intended to prevent the *plebs* from attaining to property, and so to magistracies and honours. Are we therefore to conclude that the lower classes were originally excluded from these distributions, or must we suppose, that, by the number of primitive parcels, remaining invariable, and the population at the same time increasing, landed property became, in consequence, an aristocratic privilege, and the maintenance of the original parcels a safeguard for the higher classes? It is difficult to answer these questions with the aid of some few lines of Aristotle. We should, however, lean to the second solution.

[4] *Politics*, V. 6. Here the prohibition against acquisition seems to be regarded as a safeguard against oligarchy, which is always apt to be created by the purchase of land. There is no doubt that, in consequence of local circumstances, acquisitions were made at Thurium for the benefit of those who already had property, while elsewhere the proletarians were purchasers. Thus the same primitive law may become, in one case, an aristocratic guarantee against democracy, and, in another, a security against the development of an aristocracy.

[5] Diodorus, XII. 11.

of the three tribes which composed the population into ten curies, and divided the territory into thirty parts. He distributed one of these parts to each *curia* by lot, a portion of the territory being reserved for the expenses of religion and public domain[1]. Varro twice gives the same tradition: 'Ager Romanus primum divisus in partes tres a quo tribus appellata Tatiensium, Ramnium, Lucerum[2].'—'Bina jugera quod a Romulo primum divisa (dicebantur) viritim quæ (quod) hæredem sequerentur, hæredium appellarunt[3].'

"We also find in Festus and the Elder Pliny mention of the original survey of the Roman domain: 'Centuriatus ager in ducenta jugera definitus. Quia Romulus centenis civibus ducenta jugera tribuit.' (Festus.)—'Bina tunc jugera populo Romano satis erant, nullique majorem modum attribuit.' (Pliny)[4]."

M. Viollet also sees a proof of the previous existence of the community of the soil in a practice, which is very common in antiquity, and is found in early times among all modern nations, and is, in fact, derived from the joint possession of the soil. According to this custom the alienation of land to any one, who is a stranger to the village, is not allowed without the consent of the inhabitants, who have even the right of purchasing the land on tendering the price offered. First, we may notice the ancient Hindoo custom:

"At a very remote period the alienation of land in India was not valid without the consent of the inhabitants of the place, of relatives, of neighbours, of shareholders, and of heirs[5]. The texts are very precise, and leave no room for doubt on the point. We here find ourselves in presence of the village community pointed out by Nearchus, on the authority of Strabo, of which we have spoken above. The neighbours have certain rights over the land. It cannot be alienated without their authority, and their consent is necessary for the admission of a new possessor. These are the natural consequences of the old joint-ownership of the tribe. Every-

[1] Dionysius of Halicarnassus, *Ant. Rom.* II. 3.

[2] Varro, *De Lingua Latina*, v. 55. [3] Varro, *De re rustica*, I. 10,

[4] Pliny, *Natural History*, XVIII. 2.

[5] "Land is conveyed by six formalities, by the assent of townsmen, of kindred, of neighbours, and of heirs, and by the delivery of gold and of water." (Colebrooke, *A Digest of Hindu Law*, II. 161, Art. XXXIII.). Conf. Orianne, *Traité original des successions d'après le droit hindou; extrait du Mitacshara de Vijnyaéswara*, Paris, 1844, p. 49.—Pross'onno Coomar Tagore, *A succinct Commentary of the Hindoo Law prevalent in Mithila, from the original Sanscrit of* VACHASPATI MISRA. Calcutta, 1863, p. 310.—See *Caract. collect. des premières propriétés immobilières*, by Viollet, p. 30. "According to Mr George Campbell, the alienation of landed property is very rare. The village community has a right of veto, and would not allow the entry of any stranger who might be obnoxious." "The seizure and sale of land for the payment of a debt is an idea unknown to the Hindoos." *Systems of Land Tenure in various Countries*, p. 166.

thing in the system is simple and logical, the moment we refer it to this historical idea."

In Greece the neighbours take part in the act of sale, either as witnesses or as guarantees. Sometimes, as at Thurium, they received a small coin, Theophrastus tells us, which seemed to be the price of their assent, or the acknowledgment of certain rights of joint-ownership. According to the German civilian Puchta[1], the ancient mode of acquisition by a fictitious *vindicatio* before a magistrate, called *in jure cessio*, can only be explained by the State's right of eminent domain over all moveable and immoveable property.

The *retrait*, or right of claiming land, in case of sale to a stranger, recognized in the inhabitants of the village, is found everywhere. It exists in most Mussulman countries, in Algeria, in India[2], and Java. The *retrait* by the townsmen was still in force in Illyria and Italy under the emperors; for a constitution of the year 391, concerning these provinces, abolished the custom. We have seen that it exists in Russia. It is also to be found among the Southern Slavs, and in primitive times was common among the German tribes.

In Switzerland it still exists for the *Allmends*. In France, this primitive custom survived until a very recent period. In the district of Angle (Saint-Omer), and at Fillièvre (Hesdin)[3], the inhabitants had the right of *retrait* against every stranger purchasing lands in its territory. Traces of it are also to be found in the *Libri feudorum*[4]. We may, therefore, assert that the right of *retrait* formerly existed everywhere as a remnant of the previous collective property.

When the right of alienating land was introduced among the Germans, the transfer of property continued to be a public act, which could only be effected in the assembly of the inhabitants of the district. According to title LIX. of the law of the Ripuarian Franks, sales had to be performed in the *Mallum*. Gifts, also, were authenticated in this assembly.

In England, during the Saxon period, the transfer of landed

[1] Puchta, *Cursus der Institut.*

[2] Sir William Hay Macnaghten, *Principles of Hindu and Mahommedan Law*, c. IV. pp. 204, 205.

[3] M. Viollet borrows these facts from Bourdot de Richebourg, Vol. I. p. 306 and 347.

[4] *Libri feudorum*, lib. V. tit. XIII. XIV.

property was effected in the general assembly, after public proclamation[1].

In the provinces of the Low Countries, in the middle ages, sale of land preserves the character of a public transaction. It was carried out in the presence of the sheriff of the commune, and an official report was kept in the Hôtel-de-Ville[2].

I regard the fact that immoveables, even when they have become individual property, are originally in every case incapable of being sold or devised, as an additional proof of the primitive community of the soil. M. Fustel de Coulanges, from whom we borrow further on the passage in proof of this fact, attributes it to the influence of primitive religion. This explanation is insufficient, as there was no sale or devise of lands in Germany, nor is there at the present time in Russia, or the Swiss *Allmends*. For a fact of such universality we must seek an equally general rule. Its origin seems to have been this. Originally the right of possessing a portion of the soil is a natural right, inherent in a man's person. The land is divided among all, according to an unalterable custom, which no one can modify at pleasure. The individual attains to possession of the soil, not by virtue of a contract of sale or testamentary devise, but by reason of his character as a member of the human race, and his inalienable right of living by labour applied to the soil, the common foster-mother of his kind. An agrarian organization, founded on such a conception of property, obviously allows of no alienation of immoveables, whether by sale or testament. It is not human caprice, but a principle of public order, which controls property.

We will now borrow from M. Fustel de Coulanges some proofs of the original inalienability of the soil:

"Plato, in his treatise on the Laws, did not claim to be advancing a new rule when he forbade the proprietor to sell his land; he was only reviving an old law. Everything leads us to suppose that in ancient times property was inalienable. It is well known

[1] Gurdon, *On Courts Baron*, and Kelham, *Domesday Book*, p. 242.

[2] For the towns of Amiens and Lille, see the sources quoted by M. Viollet, *Ancient Customs of Amiens* (first half of the thirteenth century), Art. 6 in A. Thierry, *Recueil des Mon. inédits du Tiers-Etat*, district of the North, Vol. 1, p. 129. Second custom previous to 1292, *ibid.* pp. 163, 164. Conf. a sale effected in 1170 before the commune of Amiens; a gift in 1195 of the same kind, *ibid.* pp. 94, 95—118, 119.

that in Sparta a citizen was formally forbidden to sell his lot of land[1]. The same prohibition was included in Locrian and Leucadian laws[2]. Phido of Corinth, a legislator of the ninth century, ordained that the number of families and of properties should remain fixed[3]. This ordinance could not be observed unless the sale and even the division of lands had been prohibited. The law of Solon, later by seven or eight generations than that of Phido of Corinth, no longer forbade the sale of property, but it subjected the seller to a severe penalty, the loss of all the rights of citizenship[4]. Finally, Aristotle informs us in general terms, that, in many towns, the early legislation prohibited the sale of lands. Our knowledge of the Roman law only begins from the XII Tables; at this period it is clear that the sale of property was permitted. But there is reason to suppose, that in the early times of Rome, and in Italy before the existence of Rome, the soil was inalienable, just as in Greece."

In ancient India the sale of immoveables was unknown[5], and is still rare in the districts not yet "anglicized." The same was the case in ancient Germany. The sale of land does not appear till the barbarians were acquainted with the principles of the Roman Law. The first law of the Visigoths, published by Blume[6], does not mention land among the things that may be sold; and the revised text, promulgated later, adds the word "lands." *Sive mancipia seu quodlibet animalium genus venditur*, said the original text: *sive terræ*, adds the more recent one. Several German laws seem to concede the power of selling land as a new right[7]. Others even put considerable restraint upon the right. If the necessity of the sale is not proved, immoveables cannot be alienated. Thus in the law of the Saxons: "Liber homo qui sub tutela nobilis cujuslibet erat, qui jam in exilium missus est, si hæreditatem suam necessitate coactus vendere voluerit, offerat eam primo proximo suo, ...[8]."

[1] Plutarch, *Lycurgus*, *Agis*. Aristotle, *Politics*, II. p. 10.
[2] Aristotle, *Politics*, II. 4, 4.
[3] Id. II. 3, 7.
[4] Æschines, *Contra Timarchum*.
[5] *Mitacshara*, *trad. Orianne*, p. 50.
[6] Blume, *Die westgothische Antiqua oder das Gesetzbuch Reccared des Ersten*, 1847, ch. 294, p. 18, 20.
[7] See *Law of the Thuringians*, tit. XIII.: "Libero homini liceat hæreditatem suam cui voluerit tradere." Canciani, *Bar. leg. antiq.*, v. III. pp. 31—36, and Walter, *Corpus jur. Germ.*, v. I. p. 380.
Law of the Saxons, tit. XV., "Traditiones et venditiones omnes legitimæ, stabiles permaneant," and the following with Canciani's commentary, v. III. p. 51. Cf. *Lex. Burg.* t. I., and tit. LXXXIV. § 1, in Pertz, *Mon. Germ. Leg.*, tit. III. pp. 532—568.—Lex Alemannorum, in Pertz, *Mon. Leges*, t. III. p. 45. (borrowed from M. Viollet).
[8] Canciani, *Barb. leg. ant.*, t. III. p. 59.

And in Scotland (*Leges Burgorum*, cap. CXXXVIII.), "Et testabuntur quod vendens vendidit illam terram ratione pauperpatis, et illa paupertas fuit probata, ante venditionem, per duodecim legatos et fideles homines[1]."

By the customary law of the island of Gothland (cap. XXXVIII. § 1), "Landeigenthum mag niemand verkaufen ohne Noth. Treibt ihn die Noth dazu, so soll er zusagen seinen næchsten Verwandten im Beiseyn seiner Kirchspielgenossen und der übrigen Familienglieder, und diese sollen untersuchen, welche Noth ihn dazu treibt[2]."

And in the custom of Ribnitz (Mecklenburg-Gustrow), "Wird allhie einem jeden, der dazu qualificirt, und deme es im Rechten nicht sonderlich verbothen, seine Güther in Nothfællen zu veræussern, zu verpfænden, oder zu verkauffen erstattet, yedoch ober also das, ...[3]."

Primitive law is as intolerant of testamentary devise as it is of sale, because the transmission of land is a matter of public interest, the regulation of which must not be left to the decision of individual caprice.

In the earliest period, as in Germany formerly, or in Russia at the present day, the soil belongs to the tribe, and is periodically re-distributed among the families, according to fixed traditional rules. In the second period the soil belongs to the patriarchal family, such as we see it in France in the middle ages or among the Southern Slavs in our own day. In neither of these two systems is the individual allowed, during his span of life, to interfere with the natural order of the hereditary transmission of the soil.

In an agrarian organization so conceived the notion of a testament cannot even arise. Plato again accurately understands the reason why the testament could not be admitted in the system where property belongs to the patriarchal family.

1 Houard, *Traités sur les coutumes Anglo-normandes*, t. II. pp. 449, 450.

2 Schildener's translation, *Guta-Lagh*, Greifswald, 1818, p. 59, and compare *Mirror of Saxony*, l. I. art. 34:—"Ohne des Richters Urlaub, mag ein Mann sein Eigen wohl vergeben mit genehm seiner Erben; nur dass er eine halbe Hufe davon behalte und ein Gehoeft, da man einen Wagen darauf umwenden mag." (Translation by Sachsse, *Sachsenspiegel oder Sacchsisches Landrecht*, Heidelberg, 1848, p. 72.)

3 *Codicillus jurium civitatum megapolensium de an.* 1859, in Westphalen: *Monumenta inedita rerum germanicarum præcipuè cimbricarum et megapolensium*, II. Lipsiæ, 1739, col. 2061.

"Ye Gods, says the man on the point of death, is it not hard that I may not dispose of my property as I desire, and in favour of whom I please, leaving more to one, less to another, according to my regard for them?" But the legislator replies, "Thou canst not promise thyself more than a single day; thou art but a sojourner here below; and is it for thee to control such matters? Thou art neither master of thy goods nor of thyself; thou and thy property alike belong to thy family—to thy ancestors and thy descendants[1]."

This primitive idea seems far superior to the modern idea of the freedom of testamentary disposition. The principle governing the transmission of property forms the very basis of social order. For a certain period, at least, it is a rule which is better than any other. It is the most conformable to justice and the best guarantee of general happiness. This rule is for juridical science to discover and for the lawgiver to publish; it should not be lawful for individual desires, often dictated by caprice or folly, to infringe it.

The ancient Hindoo law did not recognise any testament; and until the arrival of the English even the idea was unknown. It was only introduced as the judges, deriving their inspiration from the English law, admitted it[2]. "The Athenian law, before Solon, absolutely forbade all testamentary disposition; and Solon himself only allowed it to those who left no children[3]. The testament was long prohibited or unknown in Sparta, and was only authorized subsequently to the Peloponnesian war. The memory has been preserved of a time when the same was the case in Corinth and Thebes. It is certain that the power of absolutely devising property was not originally recognized as a natural right." "Before the law of the XII Tables we have no legal text either forbidding or allowing testamentary disposition, but the language preserves the remembrance of a time when it was not known; for it calls the son *hæres suus et necessarius*[4]." Even after testamentary disposition was allowed, the wish of the testator had to be

[1] Plato, *Laws*, XI.
[2] See Sir George Campbell's Essay in the Cobden Club's volume, *Systems of Land-tenure in various Countries*, p. 172.
[3] Plutarch, *Solon*, 21.
[4] Fustel de Coulanges, *La cité antique*, 3rd edit., p. 89.

ratified by the sovereign authority, that is, by the people assembled in the *curies*, under the presidency of the pontiff. The most ancient form of testament is that *comitiis calatis*. In Germany the testament was unknown. *nullum testamentum*[1]; and the barbarians only made use of it after the conquest, under the influence of Roman ideas and of the church, which found in it an abundant source of wealth[2]. "The best authorities," says Sir H. Maine, "agree that there is no trace of it in those parts of their written codes which comprise the customs practised by them in their original seats, and in their subsequent settlements on the edge of the Roman Empire[3]."

Originally the clan, or village, is the collective body owning the soil; later on, it is the family, which has all the characteristics of a perpetual corporation. The father of the family is merely the administrator of the patrimony: when he dies, he is replaced by another administrator. There is no place for the testament, nor even for individual succession. We shall see presently that this is still the case among the family communities of modern Servia. Such was also the law everywhere where these communities have existed; and, probably, every nation has passed through the system.

So far from being a natural right, testamentary disposition is a novelty in the history of law. As Sir H. Maine remarks, the Romans invented it. The testament was not at first conceived of as a means of distributing wealth or effecting the division of property; but only for better regulating the interests of the family.

Customary law, and the great jurists, who have interpreted its spirit to us, are equally hostile to the testament. The fundamental maxim of the customary law on this point is, *Institution d'héritier n'a point lieu*. Legacies were but tolerated. The indulgence of the law, says Bourjon, allows a man at his death a sort of empire over his property; but the law is wiser than the individual. Therefore he shall not interfere with the order established by it. Human wishes should not trouble the divine order, says Domat. All customs impose more or less limitation on the right of testamentary disposition.

[1] Tacitus, *Germania*, xx.
[2] Laboulaye, *De la condition civile et politique des Femmes*, p. 90.
[3] *Ancient Law*, p. 172.

CHAPTER XI.

PROPERTY IN GREECE.

THE Roman idea of a right of absolute property was always foreign to Greece. The territory of the state was regarded as belonging to it alone; the citizens had merely an enjoyment of it, subordinate to the general interest, hence the frequent partitions of the soil and the constant intervention of the law to regulate the distribution of property. The philosophers, the politicians, and the legislators of antiquity, all evinced the same desire, that every citizen should have a portion of landed property, and that the law should prevent excessive inequality. In the *Republic* of Plato the land is divided in equal parts among all the citizens. In order that all might be interested in the defence of the country, Aristotle would have every one hold two plots of land, assigned by lot, one near the city, the other near the frontier[1]. In the majority of Greek states we find measures intended to maintain equality in landed property. In Leucadia the sale of hereditary property was absolutely forbidden; among the Locrians it was only allowed to meet a necessity on proof of such necessity. At Corinth, the legislator Phidon, to maintain the equality of the lots, endeavours to make the number of citizens invariable. Philolaus, a Corinthian by birth, who gave laws to Thebes, endeavoured to attain the same end by regulating adoptions, and Phileas of Chalcedonia hoped to re-establish the equality of property by enacting that the rich should give portions to

[1] Arist. *Politics*, IV. 9, § 7.

their daughters, but should not receive them; while the poor should receive them, but not give them[1].

Sparta, at the time when it appears in history, had already discontinued the system of primitive community. It had, apparently, arrived at the system of collective property in the *gens*, or clan. The elementary unit of society was the *γένος*, the same word as the Roman *gens*, and corresponding to the *lignées* and *geschlächter* of the towns of the middle ages. It was a group of families, connected by traditional descent from a common ancestor, whom they worshipped in common, their religious ceremonies being celebrated at the same altar. The patrimony was inalienable. There, as among the Jews, the object of all land legislation was the preservation of the family. When a daughter was the only heir of a family, the nearest relation was obliged to marry her, and even to divorce his existing wife for the purpose. He might also claim her, even against her will. In theory, every inheritor succeeded by individual title; but the community was generally maintained between brothers. There was no partition. "All the children remained grouped round the same hearth," M. Jannet tells us; "one of the brothers, the most capable, and, as a rule, the eldest, by reason of the sacred privilege of his birth, regulated the community and bore the expressive name of *ἑστιο-πάμων*, the preserver of the hearth. Plutarch, in his *Treatise on Paternal Affection*, shews that these communities played a very important part in the ancient social condition of Greek nations. They were probably the pivot of the family organization. Partition among the children was only effected in exceptional cases. In course of time this was reversed; but then the principle of compulsory partition was at variance with the other institutions, all of which had in view the preservation of the patrimony in the family. Hence arose the incoherence of the Greek law, which Cicero notices, in comparison with the Roman system based on the testamentary institution of an heir."

The sons and their male descendants completely excluded the daughters, as at Athens and in other Greek states. The testament here, as in all primitive Greece, was unknown. Right and the interests of society, not the arbitrary will of the

[1] Aristotle, *Politics*, II. 4, § 4;—II. 3, § 7;—II. 4, §§ 1, 2.

individual, fixed the succession. The constitution of property was, therefore, the same at Sparta, as among the Southern Slavs of the present day, or in the rural districts of France in the middle ages.

The primitive community left deep traces on the social organization of Sparta. Plutarch, in his *Life of Lycurgus*, c. XVI., tells us that, at the birth of each child, the elders of the tribe assigned to it one of the 9000 lots of land in the territory of the state. The truth of this statement is denied, because it would follow that there was no right of succession, and that the earth was common, which is contrary to established facts. But, side by side with the family patrimonies, there may very well have existed a collective domain, like the Germanic *Allmend*, in which every one obtained his share.

Sparta had a communal domain of great extent, the produce of which served in some measure to maintain the public repasts. There, as in the majority of the other Greek states, it comprised forests and mountain[1]. The public repasts, *Syssitics*, which were arranged in messes of fifteen persons, were the basis of the military and political organization, under the name of *Phidities* and *Andries*. A similar institution existed in almost all of the Greek states. Its economic importance was not everywhere the same, but depended on the common revenue. At Sparta every one had to contribute towards it a certain number of measures of oil and barley. In Crete, according to Aristotle, the *Phidities* contributed most to the maintenance of equality.

Grote and other historians regard with doubt the famous division of property into 9000 equal parts, which, according to Plutarch, was effected by Lycurgus. There may be some doubt with regard to the details, but the division, in itself, is entirely in harmony with the spirit of ancient politics. A division of property seems to have taken place at the time of the foundation of the state, about the year 1000 B.C., and after the conquest of Messenia under Polydorus (700 B.C.). However this may be, Aristotle reproaches Spartan legislators for not

[1] See Herodotus, VI. 57; Pausanias III. 20; Plato, *Laws*, I. The Cretan towns derived from their common lands, cultivated by a particular class of serfs, sufficient to provide the public repasts. The citizens had therefore at least the means of subsistence.

having taken efficient steps to maintain equality of condition. The population, he says, was divided into rich and poor: all the wealth was in the hands of a few individuals, possessed of colossal fortunes. According to Aristotle this concentration of landed property was carried so far, that in the time of Agis III., the whole of Laconia was the property of one hundred persons. The population rapidly decreased. The number of men capable of bearing arms was reduced from 10,000 to 1,000 even in the time of Aristotle, and was only 700 in the time of Plutarch. Aristotle saw no other remedy for the decay of the state than a partition of lands, with a view to the re-establishment of equality of property. The struggle between the rich and the poor had already begun at the period when the Stagyrite wrote. In several towns, he says, the rich had taken this oath: "I swear to be the enemy of the people, and to do them all the harm in my power[1]." At Sparta, and in many other Greek states, the kings placed themselves at the head of the people in opposition to the aristocracy. Cæsarism was democratic and socialistic. Agis advocated a division of property, but was killed. The king Cleomenes (238—222 B.C.) carried out the popular programme:—the abolition of debts, the partition of property, and the grant of political rights to all who had been deprived of them. Laconia was divided into 15,000 parts allotted to the Periœci, and 4,500 to the citizens. Cleomenes, overthrown in foreign war, was succeeded by other "tyrants," who continued to oppress and despoil the rich, to retain the favour of the people. The economic history of Sparta, repeated in the other Greek states, is very similar to that of Rome. So long as equality was maintained by the families preserving their patrimony, political liberty survived. When once the rich usurped the soil, the struggle of classes began, and was only ended by the establishment of despotism and the destruction of the state.

Aristotle, in his *Politics*, sums up in a few words the conclusion derived from the economic history of Greece. "For them (the legislators) the crucial point seems to be the organization of property, the one source, in their opinion, of revolutions. Phileas of Chalcedonia was the first to lay down the

[1] *Politics*, VIII. 7.

principle that equality of fortune was indispensable among the citizens." In fact, when the division of property is too unequal, democracy leads to social revolution; for the man who has the suffrage, seeks also to have property. Democratic institutions have only brought man peace, when, as in Switzerland and in primitive time, manners are simple and conditions very equal.

In the other Greek republics we find the same economic evolution as at Sparta,—the concentration of landed property, the advance of inequality, cultivation by slaves, whose number is continually increasing, and finally depopulation. When Greece became a Roman province it was transformed into a desert, where the flocks wandered at will, and wild beasts lurked in the ruins of temples and cities. At the end of the first century of our era, the population was so reduced that the whole of Greece could hardly produce 3,000 fully armed warriors, the number which Megara alone sent to the battle of Platea. Equality was the basis of Greek democracies; inequality was their ruin[1].

[1] See the instructive work of Karl Bücher, *Die Aufstände der unfreien Arbeiter*, 1874, ch. IV.

CHAPTER XII.

PROPERTY AT ROME.

THE Romans, after passing the two successive stages of the village community and the family community, were the first to establish exclusive, individual property in land; and the principles they adopted on this subject still serve as the basis of law for continental states. Scarcely, however, was quiritary dominion established, when it threatened the existence of the democratic institutions and of the Republic, by its power of encroachment. It was in vain to set limits to it: *la grande propriété* consumed *la petite*. The economic history of Rome is little else than a picture of the struggle against the encroachments of quiritary dominion[1].

The philosophers and legislators of antiquity knew well, by experience, that liberty and political equality can only exist when supported by equality of conditions. The *Politics* of Aristotle enumerates a number of means employed by the Greeks to maintain this equality. At one time they limit the maximum amount of land, which a citizen may possess; at another, they declare property inalienable to prevent its accumulation; at another, individual property is modified by common repasts, of which all partake. There is one constant struggle against inequality. "Inequality," says Aristotle[2] with much perception, "is the source of all revolutions." According to Böckh, the war between the rich and the poor destroyed Greece[3]. So long as landed property preserved its collective

[1] See an interesting essay by G. Arendt, *Du régime de la propriété territoriale, considéré dans ses rapports avec le mouvement politique.*
[2] *Politics*, v. 1.
[3] *Staatsh. der Ath.*, I. p. 201.

character, equality resulted from the periodic partition, as we still see in Russia. This was the golden age, of which the ancients preserved a recollection and which continued to be their ideal. Even later, when the several families lived on their common, indivisible and inalienable patrimony, as in Judæa or ancient Greece and Italy, at the time when the *gens* and *γένος* preserved its primitive character, inequality was confined within limits. But at Rome, when quiritary, that is to say, individual and exclusive property, capable of indefinite extension, was developed, none of the precautions contrived by the Greeks were adopted to limit it. On the contrary, every newly conquered territory gave it a vast area over which it could extend. Thus the inequality increased which was to destroy the Republic, and subsequently the whole Roman Empire. We will state briefly the attempts made to check its progress.

The writers of greatest authority think that in Latium the soil was originally the collective property of the clan. At the time when the history of Rome begins, we find, it is true, lands belonging to citizens in private ownership, *agri privati*, as well as extensive lands belonging to the people collectively, *ager populi, ager publicus*. But private property was of small extent. It only comprised the space necessary for the house, court-yard and garden, that is, two *jugera*[1]. This was the *heredium*, the land which was transmitted hereditarily, while the rest of the territory was collective property, *ager publicus*.

The *heredium*, like the lot assigned to the Spartans, was regarded as inalienable, because it was the necessary home of the family, and even to the last days of the Republic it was a disgrace to sell it[2]. The heredium was not sufficient for the support of a family[3], and accordingly they had to obtain the rest of their means of subsistence by cultivating portions of the *ager publicus*, and by turning on to the common pasturage the cattle, which was originally the principal form of wealth. This

[1] Varro clearly marks this distinctive feature: *Bina jugera a Romulo primum divisa dicebantur viritim quæ, quod heredem sequerentur, heredium vocantur.*

[2] See Schwegler, *Römische Gesch.* Tubingen, 1856, II. 6, 444: and Moritz Voigt, *die Bina jugera, Rhein. Museum für Philologie*, 1866.

[3] The *Bina jugera*, which are about an acre and a quarter, according to Mommsen, could only yield 800 kilogrammes of corn, or only 400 annually, as they would have to lie fallow every other year.

agrarian system is precisely similar to that of modern Russia or primitive Germany, where the hereditary domain seems to have been much the same in extent as the Roman *heredium*. There is, however, this difference, that we do not find that the collective domain was subject to periodic partition at Rome, as among the Germans or Slavs. The custom, if it ever existed, has left no traces in history. The *ager publicus* was subject to the free right of occupancy, as in Java, or in Russia before the partition was introduced to establish equality. Every member of the *populus*—every patrician, that is—might occupy such vacant portion as he found convenient, on the one condition of conforming to the rules governing this method of occupation[1]. This did not confer any right of property, but a mere possessory right, in theory always revocable, which, however long it existed, was never transformed into full ownership, or *dominium ex jure Quiritium*. As a matter of fact, however, the patricians retained the enjoyment of the lands which they cultivated, because there was no fixed period at which they were to return into the common stock. The lands thus occupied by the patricians became so extensive, that they surrendered a portion to clients, *precario*, that is to say on the request of the clients, a portion of the produce being reserved. Later on, when successive conquests increased the number of slaves, the patricians cultivated by their labour the portions which they occupied of the *ager publicus*.

They had also the right to depasture their cattle on the public pasturage (*pascua publica*) on paying to the treasury a rent, from which they soon freed themselves. The plebeians, like the *hintersassen* of the Germanic *mark* had no right of occupancy over the public domain. From time to time, however, lands were distributed among them, and their lots seem to have been ordinarily about 7 *jugera* in extent[2]. The plebeian lot was greater than the patrician *heredium* because it had to suffice for the maintenance of a family, whereas the *bina jugera* merely comprised the *hof* or dwelling-house and its accessories, the arable land and pasturage being taken from the *ager*

[1] For proof see Maynz' excellent work, *Cours de droit romain*, § 14 and § 82.
[2] See Maynz. Varro, *de Re Rustica*, I. 2, 9: Livy, v. 24, 30: Pliny, *H. N.* XVIII. 3, 4: Columella, *de Re Rustica*, I. 3.

publicus. As in early times agricultural labour is the sole source of wealth, every free man must have a portion of land to be able to subsist. Hence, in default of the periodic partition which maintained equality in the German and Slavonic commune, it was constantly necessary at Rome to have recourse to distributions of land which the plebeians never succeeded in retaining. According to the traditions collected by historians, there was a division of the soil made by Romulus. He divided the territory among the three tribes. Each tribe was divided into *curiæ*, and each *curia* into *centuries*. The *century*, like the Anglo-Saxon *hundred*, contained a hundred warriors or heads of families, and each of them had a private domain of two acres. This was, according to tradition, the quantity allotted to each citizen by Romulus. Dionysius adds, that Romulus reserved a portion sufficient for the maintenance of religious worship, and that another portion remained the domain of the State. This last portion was far the largest. Numa, Tullus Hostilius, Ancus Martius made distributions of land *viritim* according to Cicero, that is, in equal shares per head. *Viritanus ager dicitur,* says Festus, *qui viritim populo distribuitur.* Servius Tullius orders all those who have taken possession of public lands to restore them; and gives those who have no land seven *jugera*, in order, as he tells us in the speech attributed to him by Dionysius, that the plebeians might no longer cultivate the lands of other people, but their own, and might be so made more courageous in the defence of their country. Under the Republic there are constant efforts to keep the land in the hands of the plebeians. In 404 B.C. Spurius Cassius proposes to distribute among them the conquered lands of the Hernicans; but he lost his life for this proposition, which Livy calls the first agrarian law: *Tum primum lex agraria promulgata est* (II. 41[1]). Some years later, the tribune Icilius effected the

[1] For the agrarian laws, consult *Römische Rechtgeschichte* of A. F. Rudorff, p. 38; Dr Wilhelm Ihne, *Forschungen auf dem Gebiete der Römischen Verfassungsgeschichte*, p. 75. Ihne shews that if the plebeians were constantly indebted to the patricians, it was not from having borrowed money of them; but because they had obtained lands from them, for which they owed rents, which they were often unable to pay. Ludwig Lange, *Römische Alterthümer*, p. 140. The first volume of the Corpus inscriptionum latinarum: *de agro publico populi romani* (Mommsen). Laboulaye, *Des lois agraires chez les Romains.* Revue de législation, vol. II. p. 385 and vol. III. 1; and especially Antonin Macé, *Histoire de la propriété, du domaine public et des lois agraires chez les Romains;*

partition of the lands of the Aventine (*Lex Icilia de Aventino publicando*). During the century which elapsed between Spurius Cassius and Licinius Stolo, M. Antonin Macé reckons twenty-eight bills (*rogationes*) of the tribunes to obtain an assignment of lands in favour of the plebs. The patricians, however, defeated them, or else rendered them ineffectual. The continual wars tended more and more to the ruin of the small proprietors, and at the same time tended to favour the accumulation of land and wealth, by increasing the extent of land taken from the enemy, which the patricians took possession of and cultivated by the labour of the conquered inhabitants, who were reduced to slavery. The famous Licinian laws were intended to limit the advance of inequality, by checking the diminution in the number of freemen which had become alarming. The *Lex Licinia* forbade any one to possess more than 500 *jugera* of public land: *ne quis plus quam quingenta jugera agri possideret,* are the words of Livy (VI. 35). The Greek historian, Appian, gives the other clauses of the law: "No one shall depasture on the *ager publicus* more than a hundred head of large cattle, or more than five hundred sheep on his own land. Every one shall support a certain number of free men. The portion of the public land taken from those who have more than 500 *jugera,* shall be distributed among the poor." The Republic was saved for a time by the better distribution of the soil, which increased the number of free proprietors and of soldiers. Historians are unanimous in commending the good effects of the Licinian laws. "The century which follows the Licinian laws," says M. Laboulaye, "is the one in which the soldiers of Rome seem inexhaustible. Varro, Pliny, and Columella continually refer to these great days of the Republic, as the time when Italy was really powerful by the richness of its soil, and the number and prosperity of its inhabitants. The law of the five hundred *jugera* is always quoted by them with admiration, as being the first which recognized the evil, and sought to remedy it by retarding the formation of those vast

Savigny, *Traité de la possession d'après les principes du droit romain;* Giraud, *Recherches sur le droit de propriété chez les Romains sous la république et sous l'empire;* Niebuhr, *History of Rome;* Antonin Macé, *Histoire des lois agraires;* W. Drumann, *Die Arbeiter und Communisten in Griechenland und Rom.*

domains, or *latifundia*, which depopulated Italy, and after Italy the whole empire." (*Des lois agraires chez les Romains.*) Unfortunately, after the conquest of Macedonia, the clauses of the Licinian law were no longer enforced. Shortly after the first Punic war, the tribune C. Flaminius demanded the distribution of the lands recently taken from the Gauls, to relieve the misery of the plebs, which had again become excessive. The small proprietors had disappeared, and their property had gone to swell the *latifundia*.

In the country, free men were no longer employed for the cultivation of the soil. In consequence of the foreign wars, slaves were sold at a low price, and free men could not compete with them. The latter lived in idleness on distributions of corn, and made a traffic of their votes or their evidence. Pasturage replaced agriculture[1], and Sicily and Africa were made to provide the corn supply as their tribute.

Tiberius Gracchus reproduced almost exactly the Licinian law[2]. The father of a family could retain, this time on a complete title, 500 *jugera* of public land; with half that amount in addition for each son. For the lands which he had to restore, he received an indemnity proportional to the improvements he had executed. The lands taken back by the State were to be distributed among the poorer citizens, who were already forbidden to alienate their share. The law was passed, but its execution was, in great measure, eluded. Caius revived it with the same result. It was almost impossible for the State to recover possession of lands which had been occupied for so long as to be indistinguishable from private property. It could only have done so successfully by a great effort based on some secure support. It is well known with what skill the patricians, using fraud and violence by turns, managed to rid themselves of the Gracchi, the greatest citizens and most clear-sighted statesmen that Rome produced.

[1] Varro, II. 10. Cæcilius Claudius suffered great losses during the Civil wars, and yet left at his death 3,600 yoke of oxen, and 257,000 head of other cattle (Pliny, XXXIII. 47).

[2] In the magnificent harangue put into his lips by Plutarch, after saying that one might travel for several days in Italy without meeting a single free man, he exclaims: "The wild beasts have dens and lairs to retreat to, while those who fight and shed their blood in the defence of Italy, have nothing of their own but the light of the sun and the air which they breathe; houseless, and homeless, they wander in all directions with their wives and children."

But, for the salvation of Rome, an agrarian law was not sufficient. It required a series of such measures and a consistent policy, having in view the suppression of large properties, and the re-constitution of small ones. Unfortunately, fresh conquests were continually putting new lands, and slaves for the cultivation of them, at the disposal of the rich; and consequently it was impossible to stop the growth of *latifundia.*

After the death of the Gracchi, the higher classes succeeded in passing three agrarian laws, between the years 121 and 100 B.C., which Appian makes known to us. All three were intended to be—and were effectually—favourable to the increase of large estates. The first, contrary to the laws of the Gracchi, allowed every one to sell the portion of land which he had received. The result was that the poor sold their shares, which they often did not know what to do with; and the rich gradually monopolised the whole of the *ager publicus.* The second law forbade any new division of the public land. It was to remain in the hands of its present holders, a rent being paid by them, the amount of which was to be distributed among the citizens. The latter, therefore, received in the place of the land which would have compelled them to labour, an allowance in money, which induced them to remain idle and live at the expense of the public treasury. Finally, the third law abolished even the rent; so that there remained nothing of the laws of the Gracchi but a single clause, favourable to the aristocracy, which gave a definite title to the possession of public land. Independently of these agrarian laws, an attempt was made to re-establish the class of proprietors by settling citizens and soldiers on the conquered lands. In 422 B.C. when a colony was founded at Labici in Latium, 1,500 plebeians, fathers of families, were sent out, and each obtained the *bina jugera* (Liv. IV. 47, 5). Eighty-nine years later, 300 colonists sent to Terracina receive similar lots (Liv. VIII. 21, 11): and the maxim is proclaimed that lots of two *jugera* each are to be given to plebeians in all conquered lands[1]. In 369 B.C., 2,000 colonists established at Satricum in Latium obtain 2½ *jugera* apiece

[1] Livy, VI. 36, 11, *Auderentne postulare patres ut cum bina jugera agri plebi dividerentur ipsis plus quinquagenta jugera habere liceret?*—Sicul. Flacc. edit. Lachm. p. 153, *Antiqui agrum ex hoste captum victori populo per bina jugera partiti sunt.*

(Liv. VI. 16, 6); in 359 B.C., 3,000 colonists sent to the Volscian country receive $3\frac{7}{10}$ *jugera* (Liv. V. 24, 4); and after the victory of Veii, which doubled the territory of Rome, the Senate allotted to every colonist 7 *jugera* (Liv. V. 30, 8). Pliny tells us that the consul, Manius Curius, after his victory over the Samnites, accused every one who was not content with seven *jugera* as being a dangerous citizen:—*perniciosum intelligi civem, cui septem jugera non essent satis* (*Hist. Nat.* XVIII. 4). In 200 B.C., after the return of Scipio from the conquest of Carthage, lands were distributed among the soldiers.

The tribune Apuleius Saturninus, in the year 100 B.C., passed a law which gave to the Roman citizens the lands of Cisalpine Gaul, reconquered from the Cimbri. He also promised 100 *jugera* of land in Africa to the veterans of Marius. This law, however, seems to have been never carried into execution. Marius contented himself with giving 14 *jugera* to his soldiers, saying: "Please God, there be no Roman, who finds a portion of earth, sufficient for his sustenance, too small for him."

In the year 65, the tribune Servius Rullus proposed a new agrarian law, which M. Antonin Macé (*Hist. des lois agraires*) characterises as just and well framed.

Rullus endeavoured to reconstitute the public domain, without having recourse to confiscation. For this purpose, he proposed to sell the lands conquered in Asia, Africa, and Greece, and with the produce to purchase lands in Italy for distribution among the citizens. Cicero attacked this scheme in the speeches which have come down to us, and which are masterpieces of eloquence. The people themselves were induced by them to reject the *rogatio*, or bill, advocated by Rullus. Three years afterwards, Cicero supported the agrarian law proposed by Flavius. Its object was to purchase lands, and establish colonies on them, but it was not passed.

Cæsar revived the ideas of Rullus and the Gracchi. As Dio Cassius tells us, he wished to restore agriculture; to re-people the wastes made in Italy by the *latifundia;* to take from Rome the idle and starving proletarians, by giving them land to cultivate; and to arrest depopulation, by re-forming fresh families of peasant proprietors. With this object, he in-

troduced a law which distributed the public domain—especially that in Campania hitherto let on farm—among all poor citizens with three or more children.

The public domain, proving insufficient, had to be supplemented by the purchase of private estates, with the treasure Pompey derived from his conquests. According to Suetonius, this law was carried into execution, and 20,000 fathers of families received land. He subsequently gave lands to 60,000 more colonists. At the end of the Republic, Sylla, Cæsar, Antony, and Octavius, to reward the soldiers who had won them power, distributed among them the treasure and the lands of the conquered; but these were not economic agrarian laws. Nevertheless, they had the effect of re-populating towns ruined by the civil wars, and of leading to the formation of new colonies. The emperors also endeavoured to increase the number of proprietors. Augustus sent colonists to all the provinces, and founded 28 colonies in Italy. In a single year, 30 A.D., 120,000 veterans obtained lands. Nero himself, also, adopted the same policy.

According to M. Macé, agrarian laws, that is to say, the distribution of public land among the citizens, produced the best results every time they were really carried into execution: and the aristocracy, by their opposition to them, caused alike their own ruin and that of the empire.

Pliny says, with much wisdom: *latifundia perdidere Italiam, jam vero et provincias* (*Hist. Nat.* XVIII. 7). Italy was handed over to slaves, and no longer subjected to the plough. A few sumptuous villas, and immense pasturages, replaced the varied cultivation, which had been carried on by small proprietors of Latin, Samnite, Etruscan or Campanian origin, and had maintained so many flourishing cities.

To maintain the populace of Rome and to support the luxury of the great, it was necessary to pillage the conquered countries. Prætors, proconsuls, and public farmers, fell on the provinces like birds of prey, and ruined them to support the idleness of Rome. The free citizens disappeared; and the Roman world, literally devoured by its plutocracy, became the sport of its armies recruited from strangers and barbarians. The fate of the empire was decided by military *pronunciamentos.*

When the Germans appeared, the country districts and the towns had alike lost great part of their inhabitants.

From the commencement of the Republic the concentration of property had been increasing, and towards the close was rapidly accelerated. Cicero was not one of the wealthiest citizens, and yet he possessed numerous estates, one of which alone had cost 3,500,000 *sesterces* (nearly £30,000). When the tribune L. Marcius Philippus introduced his agrarian law, he was able to assert, that there were only 2,000 citizens to be found in the State, who owned property: *non esse in civitate duo millia hominum qui rem haberent* (Cic. *de Offic.* II. 21). Crassus, the triumvir, besides many houses in Rome, owned lands valued at 200,000,000 *sesterces;* and his wife, Cecilia Metella, was buried on the *Via Appia* in the splendid tomb, which in the middle ages served as a fortress.

At the time of the first census under Augustus, one Roman citizen, Claudius Isidorus, was found to have 4,116 slaves, 60,000,000 *sesterces,* 360,000 *jugera,* and 257,000 sheep (Pliny, *H. N.* XXXIII. 9).

Half of Roman Africa belonged to six proprietors, when Nero made them disgorge (Pliny, *Hist. Nat.* XVIII. 7). Pliny also tells us, that in other provinces the whole of the *ager publicus* was owned by a few families; and Dio Cassius (Lib. XXIX.) says, that the whole Thracian Chersonese belonged to Agrippa. An aqueduct, six Roman miles in length, only traversed eleven estates, belonging to nine proprietors! "A country," says Seneca (letter 49), "which once contained a whole people, too narrow for a single individual! How far would you drive your plough, if the boundaries of a province may not limit your estate? Its rivers run for one man; and, from their source to their mouth, their vast plains, once powerful kingdoms, are your property."

In the *Satiricon* of Petronius, written under Nero, we find a passage which gives some idea of the extent of a *Latifundium:* "On the 26 July on the lands of Cumæ belonging to Trimalchion, there were born thirty boys and forty girls. They took from the threshing-floor, and shut up in his barn 500,000 bushels of corn: they collected in his stalls 500 oxen. The same day they placed in his coffers 10,000,000 *sesterces,* which

he could not invest." Appian describes exactly how these *latifundia* were created. "As the Romans subjugated the various parts of Italy, they took a portion of the conquered soil. The cultivated part was assigned or let to tenants. As for the uncultivated part, it was abandoned undivided to any one who wished to cultivate it, an annual rent of one-tenth of the grain, or one-fifth of other produce, being reserved. The object was to multiply the Italian race, which was patient and courageous, so as to increase the number of citizen soldiers. The contrary, however, of what was intended, took place. For the rich, who were masters of greater part of the undivided lands, emboldened by length of possession, obtained by voluntary purchase or actual force the inheritance of their poor neighbours, and created vast estates of their holdings. They employed slaves for their labourers and shepherds. Military service took free men from agriculture: the slaves, who were exempt from it, replaced them, and rendered the new properties productive. The rich thus became disproportionately wealthy, and the number of slaves rapidly increased. In the meanwhile, the Italian race was impoverished, and disappeared consumed by taxes, by misery, and by war. The free man was destined to sink into idleness: for the soil was tilled by slaves, and entirely in the hands of the rich, who had no need of him."

We find then, originally, village communities, which supported a numerous population in Italy of commoners, who were both warriors and cultivators, and lived under free, democratic institutions. The absolute right of individual property, or quiritary *dominium*, was constituted at Rome, and a powerful landed aristocracy was formed on this basis. It gradually invaded the *ager publicus*, the common domain, which still represented the primitive collective *mark*. Continual conquests, always furnishing new lands for usurpation and slaves to cultivate them, constantly augmented their wealth and power. The attempt to re-constitute the old class of small free proprietors by means of agrarian laws failed. By the side of the large estates cultivated by slaves, there was no place for them: just as in the Southern States of the American Union, small independent property could not subsist by the side of the large plantations worked by negroes. The plebeians obtained political rights: but as

they succeeded in establishing no means of obtaining property, they soon derived no other benefit from their vote than that of selling it. The concentration of property in a few hands, by multiplying the number of slaves, dried up the natural source of wealth, free and responsible labour; and by destroying the sturdy race of proprietor cultivators, at once excellent soldiers and good citizens, who had given Rome the empire of the world, it destroyed the foundation of republican institutions. *Latifundia perdidere Italiam*, the irremediable fall of the Roman Empire justifies the phrase, which re-echoes through the centuries as a warning to modern societies[1]. The French Revolution, and most continental legislation, has been inspired with the feeling, which dictated the Licinian laws and those of the Gracchi. It endeavoured to create a nation of proprietors; such had been the actual result of primitive communities. To-day, in presence of the democratic movement, by which we are impelled, and of the equalising tendencies which agitate the labouring classes, the one means of averting disaster and saving liberty, is to seek an organization, which may confer property on all citizens able to labour.

[1] The eminent German economist, Bruno Hildebrand, sums up an instructive treatise on the distribution of landed property in antiquity as follows:—"The agrarian history of antiquity shews us that all ancient lawgivers endeavoured to secure to every one a certain inheritance, and to make every family participate in the benefits of landed property. Everywhere, however, the proprietors were too independent, and succeeded in centralizing and monopolizing the possession of the soil, and thus the ancient world was ruined."—*Vertheilung des Grundeigenthums im Alterthum.—Jahrbücher für Nationalökon.*, 1869, XII. p. 1—29, 139, 155.

CHAPTER XIII.

FAMILY COMMUNITIES SUCCEED TO VILLAGE COMMUNITIES.

WITH the progress of what we are accustomed to call civilization, family sentiments and family ties are weakened and exercise less influence over the actions of mankind. This fact is so general that we can see in it a law of social development. Compare the constitution of the family among the Romans in time past, or among the rural classes of Russia, who have not yet emerged from the patriarchal period, with that which we meet with among the Anglo-Saxons of the United States, who have pushed the modern principle of individuality to its extreme limits. Mark the contrast. In Russia and in Rome, alike, the father of a family, or patriarch, exercises a despotic authority over those who are subject to him. He regulates the order of labour, and apportions its fruits; he marries his sons and his daughters without regard to their inclination; he is the arbiter of their lot, and, one may say, their sovereign. In the United States, on the contrary, paternal authority is almost a nullity. Young lads of fourteen or fifteen years of age choose their own career, and act in a manner completely independent. Young girls are allowed to go out free from all restraint, to travel alone, to receive alone whom they like, and to select their husband without consulting any of their friends. The new generation disperses at an early day to the four corners of the world. Thus the individual is developed in all his energy; but the family group plays no part socially: it has only to shelter the children until the moment, never very late in coming, when they take their flight. These domestic habits

of the Americans are one of their most striking features to strangers.

In primitive societies all social order is centred in the family. The family has its worship, its particular gods, its laws, its tribunals, its government. It is the family which possesses the land. It is a true, perpetual corporation, which transmits its patrimony from generation to generation. Every nation is composed of a union of independent families, feebly held together by a lax federal bond. Except in such groups of families the state has no existence.

Not only among the several races of Aryan origin, but among nearly all nations, the family in its origin presents the same characteristics. It is the γένος in Greece[1], the *gens* at Rome, the *clan* of the Celts, the *cognatio* (to borrow Cæsar's word) of the Germans. As M. Fustel de Coulanges has very clearly shewn in his work *La Cité Antique*[2], the Roman *gens*, which played a great part so late as the first days of the republic, has descent from a common ancestor as its basis. The ancient Roman law considered members of the same *gens* mutually capable of inheriting. By the law of the XII. Tables, in default of children and agnates, the *gentilis* is the natural heir. The *gens* had, accordingly, a kind of eminent domain over the possessions of the family. Family communities are found among all nations with similar characteristics, alike among the Indians of North America, and the Irish Celts in the time of the Brehons or in the joint family of modern India. In Scotland, among the highlanders, the clan is regarded as a large family, all whose members are connected through an ancient common ancestor. In Wales they still count eighteen degrees of relationship. Cousinship among the Bretons is proverbial: and in Lower Brittany it extends indefinitely, the fifteenth of August, when all the inhabitants of a parish assemble together, being called the Feast of Cousins. Among any people, whose isolation has excluded it from the

[1] Plato in his day retained the early notions on this point. "In my capacity of lawgiver," he says, "I tell you that I regard neither you nor your goods as belonging to yourselves, but as belonging to your whole family, and your whole family with all its goods as belonging to the state." Plato, *De Leg.* l. v.

[2] *La Cité Antique*, cap. x.

influence of modern ideas and modern sentiments, we may still form an estimate of the power formerly possessed by the ancient organization of the family.

In remote times, when as yet the state with its essential attributes had no existence, individual man would have had no means of subsistence or of self-defence if he lived in isolation. It was in the family that he found the protection and assistance indispensable to him. The "oneness" of all the members of the family was, consequently, complete. The vendetta is not peculiar to Corsica; it is found among all primitive nations, being the primordial form of justice. The family takes upon itself to avenge wrongs of which one of its members has been the victim: and this is the only means of repression possible. Without it crime would go unpunished, and the certain impunity would multiply misdeeds to such a degree as to put an end to social life. Among the Germans, it was the family which received or paid the *Wehrgeld*, or compensation for crime; and there is exactly the same practice among the Albanians at the present day, and among all Indian tribes.

We have seen that everywhere, in India or Java as in Peru or Mexico, alike among the negroes of Africa and the Aryans of Europe, the elementary social group was the village community, which was in possession of the land, and divided equally among all the families its temporary enjoyment. At a later period, when common ownership with periodical partition fell into disuse, the soil did not immediately become the private property of individual owners, but it was held as the hereditary and inalienable patrimony of separate families, who lived in common under the same roof, or within the same inclosure. We have no data to discover the exact moment of transition in the long economic evolution, by which enjoyment of the soil passed from the primitive form of community to that of quiritary *dominium;* but even at the present day we may study the system as actually at work among the southern Slavs of Austria and Turkey. We possess circumstantial details regarding the system in the middle ages, and, even after it disappeared, it left many traces in customs and laws. Thus there was generally a prohibition on the alienation of land without the consent of the family.

Originally, testamentary disposition was completely unknown: primitive nations did not understand how the mere wish of an individual, taking effect after his death, could decide the ownership of property, the transmission of which, in the patriarchal group, was regulated by the sacred authority of custom. Even later, when wills were introduced, the testator could only dispose of that which he had acquired, not of that which had come to him by descent. He was absolute master of all that his own industry and economy had created; but the land which he took as his patrimony was the hereditary product of the accumulated labours of the family, which he was bound to transmit just as he had received it[1]. So early as the Assize of Jerusalem, remarks Gans[2], we see a distinction between those things which can be freely disposed of by will, and those which are not subject to the caprice of the testator, but become by force of law the property of his direct heirs. Property acquired by the testator can be transmitted just as he thinks good. The same distinction appears both in the old and new customary law of France between the *héritage* and the *acquêts ainsi que les meubles*[3]; for the first kind of property the amount that may be disposed of never exceeds one-fifth; for the others it includes the whole. This limitation imposed on the right of testators, which was subsequently adopted to some extent by the Code Napoléon, is the expression of an idea essentially sound and equitable. It is the German principle of which Tacitus tells us; respect being paid alike to the freedom of individual intent and to the rigid and immutable rights of the family. Over all that he has acquired the testator has free power of disposition; but his power is checked the moment he attempts to touch the land of his inheritance, the family property which he has administered rather as a mandatory than as absolute owner. The sound reason for these provisions, which are found universally at a certain period, is that civil society is based on

[1] It is exactly the same in the Irish *sept* (*Corus Becsna, Ancient Laws of Ireland*, III. 5), and in the *joint-family* of Modern India. See Sir H. Maine, *Early History of Institutions*, p. 111.

[2] *Hist. du droit de succession en France au moyen-âge*, par Edouard Gans. Traduct. de Loménie, 1846, p. 204.

[3] We find the same provision in an ancient English statute of Henry I. "Adquisitiones suas det cui magis velit; si bocland autem habeat, quam ei parentes sui dederint, non mittat eam extra cognationem suam."

family groups regarded as perpetual corporations, whose preservation it is bound to secure. The same motive led to the exclusion of women from succession to land. It was necessary to prevent its passing by their marriage into the hands of a strange family. As we have seen in India, in primitive Greece and among the Germans, as also at the present day among the family communities of the southern Slavs, females cannot inherit. They have only a right to a share in the moveables, to a dowry.

Just as, under the system of village communities, no one could dispose of his private property, his house and enclosure, without the consent of the other inhabitants of the mark; so in later times he could not alienate land, except with the consent of the other members of the family. In default of such formality, the alienation was void, and the land could be claimed back. The *retrait-lignager*, which was maintained in Germany till the sixteenth century, and in Hungary almost till our own time, was based on the ancient principle which attributed the eminent domain to the family. If the members of the family could enforce the re-transfer of the land to themselves on re-paying the price, it was obviously because they had a superior right over it which had been disregarded.

Trusts and entails, which make the possessor a mere usufructuary, are the aristocratic form of the family community. The property still forms the inalienable and indivisible domain of the family, but the eldest alone enjoys it, and no longer all the descendants in common. We will first consider the family communities among the southern Slavs; and will then endeavour to construct them as they existed in the middle ages.

CHAPTER XIV.

FAMILY COMMUNITIES AMONG THE SOUTHERN SLAVS.

ALTHOUGH the Slavs probably settled in Europe at an earlier period than the Germans, they have yet preserved the institutions and customs of a primitive age for a greater length of time than the latter people. On their first appearance in history, they are described as a nation living chiefly on the produce of their herds, of gentle though brave disposition, and remarkably fond of music. They had not, that is, yet emerged from the pastoral system, although they had in part renounced a nomadic life. The land belonged to the *gmina*—the German *gemeinde*, or commune—which effected annually in its general assembly (*vietza*) the partition of the soil among all the members of the clan. The yearly possession was allotted to the patriarchal families in quantities proportional to the number of individuals composing them. Each family was governed by a chief, or *gospodar*, whom it elected for itself[1].

The feature which the old Slav historian, Nestor, especially praises in them, is the force of family sentiment, which, he tells us, was the basis of society. He adds that it was preeminently the national virtue. He who broke away from family ties was regarded as a criminal who had violated the most sacred laws

[1] For a more detailed account of ancient Slav institutions, consult for Bohemia the excellent history of M. Palaçki and his *Slawische Alterthümer*, Leipsig, 1843;—for Russia, Ewers, *Aeltestes Recht der Russen*, Dorpat, 1826;—for Poland, Rossell, *Polnische Geschichte*, and Mieroslawski, *La Commune polonaise du dixième au dix-huitième siècle;*—and for the Southern Slavs, the exhaustive treatise of M. Utiesenovitch, *Die Hauskommunionen der Süd-Slaven*, and also the admirable work of M. Bogisitch, *Zbornik sadasnjih pravnits obitchaja u juznits Slovena*, Agram, 1874. M. Fedor Demelitch has just published a summary of this excellent treatise, *Le Droit coutumier des Slaves méridionaux d'après les recherches de M. V. Bogisitch*, Paris, 1877.

of nature. The individual could exercise no rights except as member of the family. The family was in fact the elementary social unit, and in its bosom reigned community without confusion; *omnia erant eis communia,* says an old chronicle.

The ancient national poems, whose discovery at Königinhof in Bohemia has given the great impulse to the Tchek literary movement, enable us to grasp this ancient family constitution. In the poem called *Libusin Sud,* or the Judgment of Libusa, two brothers, Staglav and Hrudos, quarrel about an inheritance, and this appears so monstrous that the Moldau mourns and a swallow laments over it on the heights of the Visegrad. The queen Libusa pronounces judgment: "Brothers, sons of Klen," she says, "descendants of an ancient family which came into this blessed country in the train of Tchek, after crossing three rivers, you should agree as brothers on the subject of your inheritance, and you shall hold it in common according to the sacred traditions of our ancient law. The father of the family governs the house, the men till the ground, the women make the garments. If the head of the house dies, all the children retain the property in common and choose a new chief, who on great days presides in the council with the other fathers of families."

In Poland, in Bohemia, and even among the Slavonians of Carinthia and Carniola, these family communities disappeared in the middle ages under the influence of the civil law, which, dating from an epoch when private property was established in all its rigour, was destined gradually to undermine the ancient communism, by means of the adverse decisions of the jurists. The southern Slavs escaped the influence of the civil law, by reason of the perpetual wars which devastated their territory, and more especially in consequence of the Turkish invasion. Beaten, isolated, and thrown back on themselves, their only thought was the religious preservation of their traditional institutions, and of their local autonomy. This is the cause of their family communities surviving to our own times, without being subjected to the influence either of the Roman law, or of that of feudalism. At the present day they still form the basis of agrarian organization among all the southern Slavs, from the banks of the Danube to beyond the Balkans. In Slavonia, in

Croatia, in Servian Voivodia, in the Military Confines, in Servia, Bosnia, Bulgaria, Dalmatia, Herzegovina and Montenegro, the ancient institution presents itself with identical characteristics. In Bosnia the Mohammedan beys themselves often live in community even in cities, as at Serajevo.

Except in the towns, and in the very restricted portion of the Dalmatian littoral, where owing to Venetian influence the Roman law has found its way, the vicissitudes of history, which have subjected one half of the Slav empire of Douchan to the Turks and the other half to Hungary, and the difference of political institutions consequent upon this division, have wrought no harm to rural customs, which have continued to exist in obscurity, without attracting the attention of the conquerors. It is only recently that the system of family communities has been regulated by law, as for example in Servia. Otherwise it only exists by virtue of custom; but everywhere its principles are the same, because the national traditions are similar. As M. Utiesenovitch remarks, the queen Libusa might erect her throne of justice in every part of the Southern Slav district, and pronounce, amid the applause of the village chiefs, the same judgment as in days gone by on the slope of Visegrad, in the legendary dispute between the brothers Staglav and Hrudos.

We will now examine more closely this curious institution, which, in these countries, impresses on property in land so different a form from that which it has assumed with us in the West. The social unit, the civil corporation, which owns the land, is the family community, that is to say, the group of descendants from a common ancestor, dwelling in the same house or in the same inclosure, labouring in common and enjoying in common the produce of agricultural labour. This community is called by the Germans *Hauskommunion*, and by the Slavs themselves *druzina, druztvo*, or *zadruga*, words which have much the same meaning as "association." The head of the family is called *gospodar, starchina*, or *domatchin*. He is elected by the members of the community, and has to transact the business of the community. He buys and sells the produce in the name of the association, in the same way as the manager of a joint-stock company. He regulates the work to be done,

but acts in concert with those subject to him, who are always summoned to deliberate on resolutions to be formed, whenever the subject is an important one. There is, in fact, a free parliamentary government in miniature. The chief represents the community in its transactions with any third party, and in its relations with the state. He settles all disputes which arise within the family circle, and is the guardian of all infants. The *gospodar* has the executive power, while the united associates exercise the legislative power. The authority of the head of the family is far less despotic than in the Russian family. The spirit of independence here, too, is much more pronounced. The *gospodar*, who attempted to act without the advice of his associates, would be an object of detestation, and would not even be tolerated. In Bulgaria every inhabitant has the right of *veto* on important questions. When the head of the family feels himself growing old he usually resigns his office, agreeably to the Servian proverb: *ko radi, onaj valja, da sudi*, "he who toils should govern." His successor is not always the oldest member of the group; but is that one of his brothers who seems most capable of managing the common interests. The elders are respected, and their experience secures a ready hearing for their advice; but they do not enjoy the almost sacred prestige which surrounds them in Russia. The wife of the *gospodar*, or some other woman, chosen from the family group, the *domatchica*, regulates the household and takes care of its domestic interests. She directs the education of the young and chants the national poems to them in the evenings. Her place at table is by the side of the *gospodar*. She is consulted in all marriages, and is respected by all.

The dwelling of a family community consists of a considerable number of buildings, often constructed entirely of wood, especially in Servia and Croatia, where the oak is still abundant. Within an inclosure surrounded by a strong hedge or a palisade, and generally in the middle of a lawn planted with fruit-trees, rises the principal dwelling-house, occupied by the *gospodar* and his children, and occasionally by another couple with their offspring. In this house is the large room, where the family take their meals in common, and meet at night for

the evening[1]. In buildings adjoining these are rooms for the other members of the family. In Servia the *starshina's* house is distinguished by a very high and pointed roof covered with wooden tiles. It is carefully whitewashed, and contains, besides the common hall, from two to four sleeping-rooms. The other couples have small dwellings constructed less carefully on piles, at some distance from the ground, like the barns in the Valais. Sometimes young couples make themselves a separate home within the inclosure, without, however, leaving the association. On one side are stalls for the cattle, barns, sheds, and a drying-room for maize, which together make a considerable block of buildings, or farmstead, reminding one very much of the large chalets of Simmenthal, in Switzerland, with their numerous dependencies. Each community consists of from ten to twenty persons. Some are found numbering as many as fifty or sixty; but these are exceptional. In Herzegovina there are generally from twenty to five-and-twenty persons. The larger the family the more fully is the blessing of heaven supposed to rest upon it. Distress, they tell you, never comes, except when communities are dissolved. "The isolated family has more pain than joy," says the proverb. Nevertheless, the communities are never sufficiently numerous to constitute a village. There are villages where all the inhabitants bear the same name, but yet they form several *zadrugas*.

[1] All who have had a near view of Servian homes have been struck by the fraternal intimacy of their patriarchal life. M. Kanitz, in his admirable work on Servia, describes it as follows: "In the evening the whole family collect in the house of the *starshina*, near the large common hearth, where a bright wood fire crackles. The men make or repair the implements for their daily toil. The women spin wool or flax for their garments. The children play at the feet of their parents, or ask the grandfather to tell them the history of Castrojan or of Marko Kraljevitch. Then the *starshina*, or one of the men, takes his *guzla*, and begins to sing, accompanying his voice with the stringed instrument. The *sagas* follow with lays of the heroes, and all recount in burning lines the trials of their country and its struggles for independence. Thus the common dwelling becomes an attractive spot to all, which arouses and fosters in each man affection for his family and his country, and in all enthusiasm for the greatness, the prosperity, and the liberty of the Servian nation." *Serbien*, Leipsig, 1868, p. 81. Who can look on this family life, alike so invigorating to the individual and so salutary to the state, without asking himself, with the German author of *La Famille:* "Does the economist, in considering the system of common property, take sufficient account of its moral element? Can statistics estimate by ciphers the happiness enjoyed by the family, where the children receive at the grandmother's knees the lessons and the traditions of their ancestors, and where the old men see their youth revive in the animated group of their children and grandchildren?"

The population, hitherto, has not increased very rapidly. New generations replace those which pass away, and so the composition of a family community remains nearly constant. In those which I have visited in Croatia and in the Military Confines, I have generally found three generations collected under the same roof—the grandparents reposing after their toil, the sons devoted to labour, one of them discharging the functions of *gospodar*, and finally the young children of different ages. When a family becomes too numerous, it divides, and two communities are formed. The difficulty of finding a dwelling, the merging of individual advantage in the well-being of the association, and the living in common, are all obstacles to early marriages. Many young men go to service in the towns, join the army, or devote themselves to liberal professions. They retain, however, the right of resuming their place under the common roof, so long as they are not definitely settled elsewhere. The young women on marrying pass into their husband's family. Sometimes, but very rarely, when the number of working hands is short, the daughter's husband is received into the family. In this case he enters the community, and acquires the same rights in it as the others.

In many instances, every married couple obtains the private enjoyment, for the year, of a small field, the produce of which is exclusively their property. In this they sow hemp or flax, which is spun by the wife, and furnishes sufficient cloth for the wants of the pair and their children. The women also spin the wool of their sheep on a hanging spindle, which they can turn as they walk about and watch their cattle. From this the white or brown woollen stuffs, almost exclusively worn by the southern Slavs, are woven. The white garments of the women, embroidered with needlework of the brightest hues, in patterns which recall the East, have a charming effect. Each family thus produces almost all that its limited and simple wants demand. It sells a few cattle, especially pigs, and buys certain manufactured articles. The fruits of agricultural labour are consumed in common, or divided equally among the married couples; but the produce of each man's industrial labour belongs to him individually. Each individual member can thus make himself a small *peculium;* and can even be sole owner

of a cow or a few sheep, which go to pasture with the common flock. Hence, private property does exist: but it is not applied to the soil, which remains the common property of the family association.

The average extent of the patrimony of each community is from 25 to 30 *jochs*[1], divided into a great number of parcels, ordinarily the result of periodical partition, long since given up. The stock on such a farm consists of several couples of draught-beasts—oxen or horses—from four to eight cows, from fifteen to twenty young beasts, twenty sheep and pigs, and a great quantity of poultry, the chief article of food. The produce of its lands and flocks is almost always sufficient to supply the wants of the community. The aged and infirm are supported by the care of their children, so that pauperism, and even, saving rare exceptions, accidental distress, are unknown. When the harvest is very plentiful, the surplus is sold by the *gospodar*, who gives an account of the use to which he puts the money so received. Individual members or couples purchase themselves fancy articles or finery, which they are allowed to retain, with the produce of their private industry, or of their private plot. In certain districts the women take the management alternately, each for eight days, of the different household duties, consisting of cooking and baking, milking the cows, making the butter, and feeding the poultry. The manager for the time being is called *redusa*, which signifies "she whose turn has come."

Communities dwelling in the same village are always ready to lend one another assistance. When a pressing work has to be executed, several families join together, and the task is completed with general animation. There is a kind of holiday. In the evening, popular songs are sung to the sound of the *guzla*, and there are dances on the sward under the tall oaks. The Southern Slavs delight in singing, and rejoicings are frequent among them: their life being to all appearance a happy one. Their lot is secure, and they have fewer cares than Western nations, who strive in vain to satisfy wants which become every day more numerous and more refined. In their

[1] The Austrian *joch* is nearly equivalent to one and a half English acres.

primitive form of society, where there is no inheritance, and no purchase or sale of lands, the desire of growing rich or of changing one's lot hardly exists. Every one finds in the family group the means of living as his ancestors have lived, and asks no more. The rules of succession, which give rise to so much strife between relations, the greedy desire of the peasant stinting himself in everything to increase his property, the anxiety of the proletarian uncertain of to-morrow's wage, the alarms of the farmer who fears the raising of his rent, the ambition to rise to a higher position, so frequent in the present age—all these sources of agitation, which elsewhere trouble men's minds, are here unknown. Existence flows along peaceably and uniformly. Men's condition and the organization of society are not changed, there is nothing which can be called progress. No effort to secure a better or different position is attempted, for the mere reason that the possibility of changing the traditional order which exists is not conceived of.

In the juridical point of view, each family community forms a civil person, which can hold property and be party to a suit. The immoveable property belonging to it forms an indivisible patrimony. When a member dies, there is no succession, except in respect of moveables; his children are entitled to a share in the produce of the soil, not by virtue of any hereditary right, but by reason of their own personal right. It is not as representatives of the deceased, but as labouring with the others to turn the common property to account, that they claim a share in the enjoyment of its produce[1]. No one can dispose of any portion of the soil by gift or will, inasmuch as no one is actual owner, but only exercises a species of usufruct. It is only in the case, where all the members of the family but one are dead, that the last survivor can dispose of the property at his pleasure.

If any one leaves the common dwelling to settle definitely

[1] Art. 528 of the Servian civil code regulates the succession within the *zadruga* in the following manner: "Relations who live together in the community succeed in preference to those who live outside the *zadruga*, although the latter may be nearer in blood. The stranger, who has been admitted into the community, prevails against relations outside it. Children under age who accompany their mother, when she leaves the community, retain all their rights in it. The same rule holds for all who are detained at a distance by military service, captivity, or any other involuntary hindrance."

elsewhere, he loses all his rights. On her marriage, a young woman receives a dowry proportional to the resources of the family, but cannot claim any part of the patrimonial property. This property is, like the *majorat*[1], the solid basis on which the continuance of the family rests; it cannot, therefore, be diminished or divided. The widow continues to be supported, but in return she gives her labour. If she remarries, she leaves the community, and has only a right to dowry. The member who has contributed most to increase the wealth of the *zadruga*, may claim a greater share of the common property in case of his leaving it.

In certain districts of the southern Slavs the customs regulating the family communities have received a legal consecration. The law of May 7, 1850, which regulates the civil organization of the Military Confines, completely adopted the principles of the national institution. There is, however, one point which is peculiar to the Military Confines, the obligation to carry arms imposed on all those who have a right to an undivided part of the soil as members of the communities. This is exactly the basis of the feudal system. The soil belongs to men alone, because they only obtain a grant of it on the condition of military service. In the Slav countries subject to Hungary, Croatia and Slavonia, the civil law paid no regard to national customs respecting these communities. In Servia, on the contrary, the code gave them the force of law, but not in all cases without admitting certain principles, borrowed from the Roman law, which, had they been enforced, must inevitably have led to the destruction of the institution. Thus, by art. 515, a member of the community may hypothecate his undivided share in the common property as guarantee for a debt contracted by him personally, and the creditor may pay himself out of this portion. This article is diametrically opposed to traditional custom and to the preceding articles of the same code, which ensure the indivisibility of the patrimonial domain[2].

[1] The *Majorat* is the immoveable property which is attached to the possession of a title and cannot be alienated, but passes, with the title, from heir to heir, whether natural or adoptive. "Il est contre le système d'égalité dans l'ordre équestre d'y établir des majorats." J. J. ROUSSEAU, *Gouv. de Pol.* x.

[2] By art. 508, "the goods and property of the community belong, not to its members in severalty, but to all in common."

By art. 510, "none of the members of the family can sell or give in security

In Bosnia, Bulgaria and Montenegro, the national custom has not been regulated by law, but their populations have only shewn themselves the more attached to it, the more the severity of the oppression, to which they were exposed, increased. Men instinctively associate together to resist whatever threatens their existence. The family group was far more capable of defending itself against the severity of Turkish rule than were isolated individuals. Accordingly, it is in this part of the southern Slav district that family communities are best preserved, and still form the basis of social order.

In Dalmatia, Venice had taken advantage of this agrarian organization to establish in the rural districts a militia for the purpose of repelling Turkish invasion. When France occupied the Illyrian coast, after the treaty of Vienna in 1809, the principles of the civil code were introduced into the country, and the legality of the system of communities no longer recognized. They continued to exist nevertheless, and in the interior of the country have lasted to the present day, although beyond the protection of the law, so deeply has the custom thrust its roots into the national modes of thought. In the neighbourhood of the towns the more varied life has weakened the ancient family sentiment. Many communities have been dissolved, their property divided and sold, and their members have degenerated into mere tenants or proletarians. Yet, even in the towns, great and wealthy families can be named, who still live under the associated system of the *zadruga*. The Vidolitch family, for instance, in the island of Lussin Piccolo, consists of more than fifty members, who carry on a large business and shipping trade. It is a curious example of the ancient agricultural community transplanted into an entirely different sphere.

In the Slav provinces of Hungary, about 1848, a spirit of liberty and insubordination seized on the whole population, and led to the dissolution of many communities. The young

for a debt any of the property belonging to the community, without the consent of every man of full age."

"The death of the chief of the family," runs art. 516, "or that of every other member does not alter its position, and in no way modifies the relations, which result from the common possession of the patrimony belonging to all."

"The rights and duties of a member of the community are the same, whatever the degree of relationship, or even if, being a stranger, he has been admitted into the association by the unanimous consent of the family."

couples wished to live by themselves independently, and demanded partition, to which there was no legal obstacle. The common patrimony was cut up, and a class of small cultivators sprang up, whose condition from the first was one of much misery. Neither the wealth nor the population of the country was sufficient to allow of the success of the small intensive culture of Lombardy or Flanders. Austria had a crisis to overcome; taxes were suddenly nearly doubled, and the young and active labourers carried off as recruits. Many of these small independent cultivators were obliged to sell their parcel of soil, and to work for wages as day-labourers. To put an end to the subdivision, which it was feared would ruin the soil, it was enacted that in case of partition the farm should belong to the eldest; and at the same time a minimum was fixed beyond which no one could divide the parcels of arable land. The construction of railways, the ever-growing extension of commercial relations, the new ideas which find their way into the country districts; in fine, all the influences of Western civilization, help to destroy the family communities of Croatia, Slavonia, and Voivodia. In the Confines they continue to exist, because the law has made them the basis of military organization; and also to the south of the Danube, because in these remote regions they are in harmony with the sentiments and ideas of the patriarchal epoch, which still survive there in all their vigour.

The most eminent men among the southern Slavs, such as the Ban Jellatchich, Haulik, Archbishop of Agram, Strossmayer, the eloquent bishop of Diakovàr, and especially M. Utiesenovitch and M. Mate Ivitch[1], have all boasted of the advantages of the agricultural system of their country. These advantages are real. The system is not opposed to permanent improvements and to the employment of capital, like the village community with periodical partition. Each family has its hereditary patrimony; and is as much interested as the

[1] Utiesenovitch, *Die Hauskommunionen der Süd-Slaven;* Mate Ivitch, *Die Hauskommunionen*, Semlin 1874, an interesting work followed by a scheme for the regulation of family communities. See also an article by Prof. Tomaschek in the *Zeitschrift für das priv. und öffent. Recht der Gegenwart*, v. II. b. 3; and Rolin-Jacquemyns, *Revue de Droit intern.* 8e an. (1876) p. 265, *Législation dans la Croatie.*

owner in severalty in rendering it productive. Under this system every cultivator has a share in the ownership of the soil. Every one can boast, in the words of the Croatians, that he is *domovit* and *imovit*, that is, that he owns his dwelling and his field.

The result of English law has been to take landed property out of the hands of those who cultivate it, and to accumulate it in vast *latifundia*, for the benefit of a small number of families of princely opulence. The object of French law, on the contrary, is to secure the possession of the soil to the greatest number, by means of the equal division of inheritances. But this result is only attained by an excessive subdivision, which often cuts the fields into strips that are almost too small for cultivation, and which is therefore opposed to any sound system of agriculture. The Servian laws, by maintaining the family community, make every man co-owner of the land which he cultivates, at the same time preserving to the holdings their suitable extent. By means of this association, the advantages of small properties are united with those of agriculture on a large scale. The cultivators may employ the farming implements and distribution of crops customary on large farms, while the produce is divided among the labourers, the same as in countries where the soil is subdivided among a multitude of small owners.

Civil taxes and the accidents of life are much less burdensome to the family community than where each couple has a separate establishment. Should one of its members be summoned to the army, attacked with illness, or temporarily prevented from working, the others perform his task, and the community provides for his wants, the same offices being expected of him should occasion arise. Let the isolated individual, under other systems, fail, from any cause whatever, to win his daily bread, and he and his are at once reduced to live on public charity. Among the Southern Slavs, with their *zadruga* system, no *bureau de bienfaisance* is required, as on the continent, nor any poor-rate, as with us. Official charity is replaced by family ties and duties. Labour is not a commodity, which, like all others, has to present itself in the market, and submit to the rigorous laws of supply and demand. Very few

hands seek employment, for there is hardly any paid labour. Each is co-owner of a portion of the soil, and devotes himself accordingly to the cultivation of his own land. Endemic pauperism, and even accidental distress, is, in consequence, unknown.

The family community also admits of the application of the principle of division of labour to agriculture, which ensures economy alike of time and of work. In three separate families there must be three women to manage household affairs, three men to go to market and buy and sell the produce, and three children to watch the cattle. But if these three families are united in the form of a *zadruga*, one woman, one man, and one child will suffice, while the others may devote themselves to productive labour. The associates, too, will work more cheerfully and take greater pains than hired farm-servants, for they will be animated by self-interest, inasmuch as they participate directly in the produce of their labour. This agrarian system has the great advantage of allowing the use of machinery for the advantage not only of one individual but of all. The *zadruga* occupies a considerable extent of land; it can therefore employ an elaborate system of agriculture as well as a large proprietor, and all benefit by it just as in small holdings.

The union in the same hands of capital and labour, which we endeavour to attain in the West by means of co-operative societies, exists here in full vigour, with the additional advantage, that the foundation of the society is not mere self-interest, but the affection and confidence created by ties of blood. Co-operative societies hitherto have, with rare exceptions, had but an ephemeral existence; while the family-communities, which are nothing but co-operative societies applied to the cultivation of land, have existed from time immemorial, and are the real basis of economic being in a powerful group of nations full of vigour and promise for the future.

The number of crimes and offences is less among the Southern Slavs than in the other provinces of the Austro-Hungarian empire, a result apparently due to the favourable influence exercised by the rural organization of *zadrugas*. Two

causes contribute to this result. In the first place, nearly every one has sufficient to satisfy his essential wants, and distress, the great source of crime, contributes but a slight contingent to the tables of criminality. In the second place, as each individual lives in the midst of a numerous family, under the eye of his relatives, he is restrained by this involuntary superintendence of those about him; he has, moreover, a dignity to preserve; he has a position and a name, like the nobles of the West, and the proverb "*noblesse oblige*" is not without its application to him. It is evident that this family life must exercise a healthy moral influence, in that it developes sociability. At night to pass the evening, and in the day for work and for their meals, all the members of the family assemble in the large common room. They converse and interchange ideas; and one or another sings or narrates a legend. Hence there is no occasion for a visit to the wine-shop in search of distraction, as in the case of the individual living alone, who takes this means of escaping the monotony and silence of his hearth.

In these family-communities attachment to ancient traditions is handed down from generation to generation; and they are a powerful element for the preservation of social order. It is well known what extraordinary power the *gens* imparted to the Roman republic. As Mommsen remarks, the greatness of Rome rose on the solid foundation of its families of peasant proprietors. So long as the soil remains in the hands of family-communities, no social revolution can be apprehended, for there exists no leaven of disorder.

These associations also play a very useful part in the political organization. They are intermediate between individualism and communism, and so serve as an initiation into the practice of local government. The administration of the *zadruga* resembles that of a commune or joint-stock company in miniature. The *gospodar* discharges functions similar to those of a manager: he submits a report of his management to the deliberation and discussion of those subject to him. It is like an inchoate parliamentary system, being trained for the practice of public liberty. If the Servians, just emancipated, accommodate themselves so admirably to an almost republican constitution, and a

system of government, which many western states would find a difficulty in maintaining, it is due to the Servians having passed, in the bosom of these communities, an apprenticeship in the qualities necessary for independence and self-government. It is surprising, says M. Ivitch, to see the good sense displayed by the Croatian peasants in the public deliberations in which they take part.

Another effect of the common life in the *zadruga* is to develop certain private virtues, such as affection among relations, mutual support, voluntary submission to discipline, and the habit of acting together for the same object. It has been asserted that the family is a mere method of succession. Undoubtedly the right of succession, which is ordinarily incident on the death of a relation, rouses evil sentiments, which are often placed in relief by the playwright, the novelist, or the artist. In the *zadruga* there is no succession. Every one having a personal right to a share in the produce, cupidity is never at variance with family affection, and the thought of an inheritance to be received never comes to intrude itself on the grief caused by the death of a father or an uncle. The pursuit of money does not inflame their minds, and there is, consequently, more scope for natural feeling.

I believe I have not exaggerated the merits of these family-communities, or drawn a flattering picture of the patriarchal life passed in them. A visit to the Slav districts lying to the south of the Danube will suffice to disclose the social organization exactly as I have described it. The flourshing appearance of Bulgaria, the best cultivated of all Eastern countries, shews decisively that the system is not antagonistic to good cultivation of the soil. And yet this organization, in spite of its many advantages, is falling to ruin, and disappearing everywhere that it comes into contact with modern ideas[1]. The reason is, that these institutions are suited to the stationary condition of a primitive age; but cannot easily withstand the conditions of a society, in which men are striving to improve

[1] Thus in 1869 the Servian minister of interior lamented in the *Skuptchina* the dissolution of a great number of *Zadrugas*. In the last few years 1700 have ceased to exist owing to partition. See Kanitz, *Serbien*, p. 592. In Croatia—strange to say—the diet in which the national party was predominant, recently (1874) voted a law forbidding the formation of new communities.

their own lot as well as the political and social organization under which they live. This craving to rise and to continually increase one's means of enjoyment, by which the present age is excited, is incompatible with the existence of family associations, in which the destiny of each is fixed, and can vary but little from that of other men. Once the desire of self-aggrandisement awakened, man can no longer support the yoke of the *zadruga*, light though it be; he craves for movement, for action, for enterprise, at his own risk and his own peril. So long as disinterestedness, brotherly affection, submission to the family chief, and mutual toleration for the faults of others, preserve their empire, community of life is possible and agreeable even for the women; but, when these sentiments disappear, living together becomes a purgatory, and each couple seeks to possess an independent home, to escape the community. The advantages of the *zadruga*, whatever they may be, henceforth are out of consideration. To live according to his own will, to work for himself alone, to drink from his own cup, is now the end preeminently sought by every one.

Without faith, religious communities could not survive. So, too, if family feeling is weakened, the *zadruga* must disappear. I know not whether the nations, who have lived tranquilly under the shelter of these patriarchal institutions, will ever arrive at a happier or more brilliant destiny; but this much appears inevitable, that they will desire, with Adam in *Para- Lost*, to enter on a new career, and to taste the charm of ependent life, despite its perils and responsibilities. In my nion, the economist will not see these institutions disappear hout regret.

CHAPTER XV.

FAMILY COMMUNITIES IN THE MIDDLE AGES.

CHRONICLES, charters, chartularies of abbeys, customs, all shew us that in the middle ages there existed in France, in every province, family communities exactly similar to those which are found at the present day among the southern Slavs. Until the fifteenth century we find no circumstantial details concerning these institutions; but, as M. Dareste de la Chavanne remarks, there is no period in the history of France at which there is not some text, revealing, in one phase or another, the existence of these communities.

We have no documents to tell us how they were formed, and opinions vary on this point. M. Doniol maintains in his *Histoire des Classes rurales en France,* that they were "created at one stroke as correlative to the fief," and adds that "this interpretation is the one given by the majority of authors whose study of law has been enlightened by a knowledge of history," and especially by M. Troplong in his book on *Louage.* M. Eugène Bonnemère, who devotes considerable attention to these communities in his *Histoire des Paysans,* is of opinion that they were developed under the influence of Christian ideas and on the model of religious communities. "Prompted by weakness and despair, the serfs formed themselves into groups, and thus associating themselves obtained possession of the soil, no longer in isolated independent ownership, but connected in aggregations of families." These explanations are manifestly erroneous. They rest on the evidence of the commentators of the fifteenth and sixteenth centuries, who were the first to notice these communities in France, but never suspected the remote antiquity of the primitive institution.

We must not look to circumstances peculiar to France and the middle ages for the origin of these associations, as they are found among all Slavonic nations, as well as among the Hindoos and nations of Semitic origin, and may be traced back to the earliest forms of civilization. Formerly, when all the territory still remained the common property of the village, the lots were periodically distributed, not among the individual members, but among the family groups, as is the custom in Russia at the present time, and was, according to Cæsar, the custom among the Germans. "No one holds lands as his private property, but the magistrates and chiefs distribute them annually among the clans and families who live in community[1]." These *cognationes hominum qui una coierunt* are manifestly family associations similar to those of Servia. German jurists are generally agreed that there did exist among the ancient Germans collective property of the family, a *condominium in solidum* based on the active and passive solidarity of the kindred. It was shewn, in the first place, by the obligation of the *faida* or *vendetta*:—*suscipere inimicitias seu patris, seu propinqui necesse est,* says Tacitus (*Germ.*, c. 21); secondly, it was shewn by the joint obligation to pay the composition, the *Wehrgeld* or *Blutgeld,* in which all the kinsfolk of the victim also participated: *recepitque satisfactionem universa domus,* Tacitus again tells us; thirdly, by the guardianship exercised by the head of the family, or *mundualdd,* whose position was similar to that of the Slav *gospodar* and the Russian *starosta;* fourthly, by the hereditary seisin which gave rise to the maxim of the middle ages: *le mort saisit le vif son hoir.* As Zachariæ says (*Droit civil,* § 588), there was no individual property; but it was collective and constituted a community *in solidum.* All the kinsmen were proprietors; there was, therefore, no acquisition by right of inheritance as at Rome. There was rather a continuity of possession. "On the death of the *mundualdd,*" says M. Würth[2], "those who had been under his

[1] It may be of use to give the text of this important passage: "*Nec quisquam agri modum certum aut fines habet proprios, sed magistratus ac principes, in annos singulos, gentibus cognationibusque hominum qui una coierunt, quantum iis et quo loco visum est, agri attribuunt atque anno post alio transire cogunt.*" CÆSAR, *De Bello Gallico,* VI. 22.

[2] *De la Saisine,* by M. Würth, procureur général at Ghent. Gand, 1873. See also J. Simonnet, *Hist. et théorie de la Saisine,* and Lehüerou, *Inst. carol.,* p. 52.

control either became heads of houses themselves, *Selbmundualld*, or else were placed under the authority of such chiefs. The seisin of those who remained under the *mundium* was transmitted with the same instantaneousness to the new *mundualld*, the successor to the authority of the deceased one."

As the family community was the unit for the periodical partition, it naturally followed, when this partition fell into disuse, that the communities were owners of the soil, and they continued to exist in obscurity, resisting all destruction, until they attracted the attention of the jurists, about the end of the middle ages[1].

Yet it is certain that the conditions of the feudal system were singularly favourable to the preservation or the establishment of communities, which were beneficial both to the peasants and their lords. There was no right of succession for *mainmortable* serfs, whose property at every death returned to the lord. On the other hand, when they lived in community, they succeeded to one another, or rather there was no opportunity for succession to occur; the community maintained an uninterrupted succession in its character of a perpetual civil person. "As a general rule," says Le Fèvre de la Planche[2], "the lord was considered successor of all who died: he regarded his subjects as serfs and '*mortaillables*'; he only allowed them rights when in societies or communities. When they were in this community, they succeeded to one another rather by right of accrual or *jure non decrescendi* than by hereditary title, and the lord only inherited on the death of the last survivor of the community." Hence it was only in the association of the family group that a serf family could obtain property, and find a means of improving its condition by accumulating a definite capital. By means of cooperation, it acquired sufficient strength and consistency to withstand the oppression and incessant wars of the feudal epoch.

On the other hand, the lords found it greatly to their ad-

[1] Before this period we may from time to time snatch traces of the existence of communities. Thus we see, in the *Polyptique d'Irminon*, on the domains of the abbey of Saint-Germain-des-Près, an association of three families of tenants cultivating seventeen *bonniers* of land; but the commentators on customary law were the first to give precise details on this subject.

[2] *Traité du Domaine*, Préface, p. 81. See *La Commune agricole*, par M. Bonnemère, p. 32 et seq.

vantage to have for tenants communities rather than isolated households: as they afforded much better security for the payment of rent and for the performance of the *corvée*[1]. As all the members of the association were jointly answerable, if one of them made default, the others were obliged to discharge the payments to which he was liable. It is precisely this same principle, the joint responsibility of the workmen, which made possible the establishment of the popular banks to which the name of M. Schulze-Delitsch is attached. The promissory notes of an isolated artizan cannot be discounted, because the chances of loss are too great; but associate a group of workmen, establish a collective responsibility among them, based on capital produced by economy, and the paper of the association will find credit on the best terms, as it will offer full security.

Documents of the time shew us the lords universally favourable to the establishment or maintenance of the communities. "The reason," says an old jurist, "which led to the establishment of community among the *mainmortables* is that the lands of the seigniory are better cultivated and the subjects in a better condition to pay the lord's dues, when they live in common than if they formed so many separate establishments." In many cases, the lords demand, as the condition of granting certain concessions, that the peasants should adopt the system. Thus, in an act of 1188, the Count of Champagne only grants the maintenance of the right of commonage on condition that "the children live with their father and share his fare." In 1545, the clergy and nobility get an edict issued, which forbids peasants, on escaping from *mortmain*, to become owners of land, unless they constitute a community. Up to the seventeenth century in la Marche, the landlords make indivisibility a condition of their metayages[1].

[1] "Mornac treats at great length of the communities of Auvergne and the neighbourhood," says Chabrol (*Comment. sur la coutume d'Auvergne*, vol. II. p. 499); "he considers them of great advantage to the progress of agriculture and for the assessment of public imposts."

[2] For sources, we refer the reader especially to the three works already quoted of MM. Dareste de la Chavanne, Doniol, and Bonnemère, as well as the books of Troplong on *Louage* and the *Contrat de Société*. When a perpetual metayage was granted to the metayers, a guarantee that they would live in community was exacted. Dalloz (*Jurisprud. génér.*) quotes a title of 1625, imposing the condition that the lessees should have but "one pot, one hearth, and one morsel, and should live in perpetual community."

The organization of these communities was based on the same principles as the Servian *zadruga*. The association cultivated a parcel of land in common, and inhabited the same dwelling. This dwelling was of large extent or composed of several buildings connected together, opposite which were built the barns and cattle-sheds. It was called *celle* (*cella*), and the name is preserved under different forms in a number of villages, as La Celle-Saint-Cloud, Mavrissel, Courcelles, Vaucel. The domain bore the name of the family, and even now properties are distinguishable by the article, *les*, which custom has retained before their name, as *les Avrils, les Rollins, les Segands, les Bayons, les Bernards, les Avins, les Gault.* The associated members were called "*compains*" (*compani*), because they lived of the same bread,—"*partçonniers*," because each took his share of the produce,—or "*frarescheux*," because they lived together as brothers. The community was called "*compagnie*," "*coterie*[1]," "*fraternité*;"—*domus fraternitatis*, in the *Polyptique d'Irminon.* Beaumanoir, the oldest author who gives any information on the juridical constitution of these communities, thus explains the term by which they are often designated: "*Compagnie* is constituted by our custom, by having a single common dwelling, the same bread, the same pot, for a year and a day, when the property of the several members is confused together."

In the *Institutes coutumières* by Antoine Loysel, published in 1608, several rules are still found relating to family communities (I. LXXIV.): "Serfs or *mainmortables* cannot make a will and have no right of succession, unless they live in community" (*Edition Dupin et Laboulaye*, t. I. p. 122). The lord succeeded to the serf, so that all agricultural work would have had to be carried on without the stimulus of a succession within the family group, if these agricultural communities had not existed. The serfs, living in community, and having the right of succession one to another, could also make a will in favour of one another, without impairing the rights of the lord.

[1] "This is a word found in many customs, and applied to village societies living together to hold of a lord some inheritance, which is said to be held in *cotterie*. It is particularly prevalent among the *gens de main-morte*" (*Dictionnaire de Trévoux*).

According to Laurière, in his notes on Loysel's work, the serfs living in community have this right of succession, "because they possess their property jointly, so that the portion of any who die belongs to the survivors by a kind of right of accrual[1]." When the co-partners cease to partake of the morsel or the bread, that is to say, when they set up a separate establishment, the community is at an end. The majority of customs favourable to the communities do not apply these rules rigorously. According to the custom of Nivernais (c. VIII. art. 13), "persons in a state of *mortmain* are not regarded as having separated until they have maintained, *for a year and a day*, a hearth and home apart, separated and divided from one another." In La Marche the separation was only effected by the express declaration of the co-partners; when once separated, they could only constitute themselves into a new community with the consent of the lord.

Living in this community had so much importance in matters of succession, that at Paris in ancient times, Laurière tells us, the child who was in *celle* (*cella*, dwelling), and lived of the bread and fare of his parents, succeeded to the exclusion of the others. Article XXXIII. of Loysel says: "A single child, being in *celle*, receives *mortmain*." The child in "*celle*" alone inherited, and prevented the devolution on the lord by *mortmain;* and, according to the custom of several districts, the other children were enabled to succeed through him.

The community was generally recognized as existing in fact when the peasants inhabited the same house and lived "of the same pot" for a year and a day. It was only in later times and to avoid the growing process of partition, when the institution was already tending to pass away, that several customs required a contract to make immoveables common property. Certain customs only allow community where "there is relationship between the co-partners." This was obviously the original form of these agrarian associations; and it is only in later times, under the influence of the feudal system, that communities

[1] See Chopin, Paris, tit. *Communautés*, n° 31;—*la coutume de la septaine de Bourges*, Fornerium, art. 86;—lib. IV. *Quotidianorum*, cap. 7, and the *Glossaire du droit français*, V° *Le chanteau et partage divisé*. LXXV. "Un parti tout est parti, et le chanteau part le vilain." LXXVI. "Le feu, le sel et le pain, partent l'homme mortemain."

were constituted of persons who were not descended from a common ancestor.

Those who lived in the community succeeded to one another to the exclusion of relations not members of the society; and even a stranger, when once admitted to the community, as forming a part of it, prevailed over the kinsmen who were outside the community. Guy Coquille admits this principle after having previously called it in question. "On consideration, it seemed to me more reasonable to assert that the stranger to the community is regarded as absolutely excluded. For this rigorous law seems to have been framed *in favour of the family*, to keep it united, especially in the district where village-establishments cannot be maintained except by a large number of persons living together in community; and *experience shews that partition is the ruin of families in a village*. Since, then, the law speaks generally, and the presumption is that its intention was *to preserve the family* that they might not be dissolved, it seems we must follow the terms of the law, and say that the kinsman in the community alone succeeds[1]."

In another passage of his commentary he calls these agrarian associations families and fraternities. Elsewhere he expresses himself in these terms: "These communities are true families forming a society and university, and are maintained by the subrogation of persons either born within them, or introduced from outside[2]."

Communities which were formed tacitly, without *inventaires*, and which were continued indefinitely among the survivors, were called *tacit* (*taisibles*). As in the Slav *zadruga*, the associates elected a chief, the *mayor*, *maistre de communauté*, or *chef du chanteau*. The allotment of labour, buying and selling, and the administration and government of the community were in his hands; he exercised the executive power.

Guy Coquille, the old writer on customary law already quoted, describes in quaint terms how agricultural operations were carried on in these peasant associations. "According to the old system of husbandry, several persons were united in a

[1] Guy Coquille, *Nivernais: Des Bordelages*. See also Vigier, *Angoumois*, art. 41, and *passim*. *Cout. de la Marche*, 217, etc.

[2] *Des Bordelages*, art. 18.—*Des communautés et associations*, art. 3.

family to carry on a cultivation, which is very laborious and entails many operations, in this country of Nivernais, which is naturally unadapted to cultivation. The task of some is to till the ground and prick on the oxen, lazy cattle, of which as many as six are commonly required to draw the carts. Others have to drive the cows and young mares to the pastures, others to take the sheep, and others to take charge of the swine. These families, composed of several persons, all of whom are employed according to their age, sex and capacity, are governed by one man, called the master of the community, and elected for this purpose by the rest. He directs the rest, goes to the towns, fairs or other places for the transaction of all business, has power to bind the personal property of his co-partners in matters concerning the welfare of the community, and his name alone is enrolled for purposes of taxation or subsidy. From these proofs we understand that these communities are true families or colleges, which, figuratively speaking, form one body composed of several members. The members may be distinct from one another, but by fraternity, friendship, and economic ties, are formed into a single body. As the ruin of these houses is the absolute, and inevitable result of partition and separation, it was enacted by the ancient laws of this land, alike in the case of households and families of serfs and of those households where the inheritance was held in *bordelage,* that those who were not members of the community should have no right of succession to the others, and likewise that there should be no right of succession to them."

They also elected a woman to take charge of all domestic matters and to direct the household. This was the *mayorissa,* who appears in the Salic law and also in the ancient chartulary of Saint-Père de Chartres. The French, more cautious than the Slavs, would not allow the *mayorissa* to be the wife of the *mayor,* for fear of mutual understanding between them resulting to the disadvantage of the association. When the daughters married, they were entitled to a marriage-portion, but they could claim nothing further from the community which they left. The same rule was observed in the Slav *zadruga.*

All agricultural operations were executed for the common profit. But each married couple had, in many cases, a small

peculium, which could be increased by certain industrial occupations. The wife spun; the husband wove material of wool or flax; and so the family itself produced all that was necessary for its wants. There was little ground for buying and selling. Later, however, as industry developed, the communities no longer remained strangers to it. In entering on commerce they applied the principle of division of labour, distributing the profits also among all. Legrand d'Aussy, in his *Voyage en Auvergne*[1], written in 1788, describes some communities as occupied in the manufacture of cutlery.

"Round Thiers, and in the open country, are scattered houses inhabited by societies of peasants, some of whom pursue the occupation of cutlers, while the others devote themselves to tilling the soil. Besides these single, isolated habitations, there are others more thickly peopled, in which the community is still more intimate. The hamlet is inhabited by the different branches of a family, devoted to agriculture. As a rule no marriages are contracted except between its members; and, under the guidance of a chief, elected by itself and subject to deposition by it, it forms a kind of republic in which all labour is in common, because all its members are on a footing of equality.

"In the neighbourhood of Thiers there are several of these family republics, Tarante, Baritel, Terme, Guittard, Bourgade, Beaujeu, &c. The first two are the most numerous; but the oldest, as well as the most celebrated, is the Guittard family. The hamlet, which is formed and inhabited by this family, is to the north-west of Thiers at about half a league from the town. It is called Pinon; and this name has, in the district, prevailed over their proper family name, and they are called the Pinons. In the month of July, 1788, when I visited them, they formed four branches or households, containing nineteen persons in all, men, women and children. But the number not being sufficient for the cultivation of the land and other labour, they had with them thirteen servants, which raised the total population to thirty-two persons. The precise date of the foundation of the hamlet is unknown. Tradition makes its establishment date from the twelfth century[2]. The administration of the Pinons is paternal, but elective. All the members of the community assemble; a chief is elected by the majority of voices, who takes the title of 'master'; and being constituted father of the whole family, is bound to watch over everything that concerns its welfare....

"The master, in his character of chief, receives the monies, sells and buys, ordains reparation, allots to each his task, regulates all that concerns the houses, the vintage and the herds; in short, plays

[1] Vol. I. pp. 455—95. Quoted by Bonnemère, *La Commune agric.* p. 89.
[2] Chabrol, who also speaks of the Pinons, makes them go back "to the most remote times." On *Auvergne*, vol. II. p. 499.

the same part in the society as the father in his family. But this father differs from others, in that, having only a deputed authority intrusted to him, he is responsible to those of whom he holds it, and can lose it in the same way as he received it. If he abuses his position, or administers its affairs badly, the community assembles again and deposes him; and there are actual examples of this severe justice.

"The internal domestic details are entrusted to a woman. Her department is the poultry-yard, the kitchen, the linen, clothes, &c. She bears the title of 'mistress.' She directs the women as the 'master' directs the men; like him, she is chosen by the majority of votes, and like him may be deposed. But natural good sense warns these simple peasants, that if the 'mistress' were the wife or sister of the 'master,' and these two officers lacked the honesty necessary to their administrations, the two combined would possess a degree of power dangerous to the community. Accordingly, to avert such abuses, by one of the constitutional laws of the miniature state, it is declared that the 'mistress' shall never be chosen in the same household as the 'master.' The latter officer, as his name signifies, has a general supervision, and is invested with power of giving advice or administering reprimands. Everywhere he holds the place of honour: if he marries his son, the community gives a feast, to which the neighbouring communes are invited. His son, however, is only like the rest, a member of the republic, and enjoys no special privilege. When his father dies, he does not succeed to his honours,—unless, indeed, he is found worthy of them, and deserves to be elected in his turn.

"Another fundamental law, observed with the greatest rigour, because the preservation of the society depends upon it, is that which regards property. Never, in any case, is property divided: all remains in a mass; no one takes by succession; and neither for marriage nor any other reason is there any division. Should a Guittard woman leave Pinon to be married, they give her six hundred pounds in money; but she forfeits all further claim, and so the general patrimony is preserved entire as before. The same would be the case if any of the young men should go to establish himself elsewhere......

"Whenever their work does not necessitate their being apart, they labour together. They have a common room for their meals, a large and spacious kitchen very well appointed...They have constructed a recess in it which forms a kind of chapel, and contains figures of Christ and the Virgin. Here, every night, after supper, they join together in prayer. This prayer is only offered in the evening:—in the morning each offers up his own privately, as the hours of rising vary with the various kinds of work.

"Independently of the hamlet, the Guittards are also owners of forest, garden and arable land, vineyards and large chestnut-woods. The soil is poor and produces nothing but rye; and the thirty-two mouths to be fed consume the whole crop, so that nothing remains

to be sold. Moreover, these agriculturists, whose habits and life of labour inspire respect, perform great works of charity in the place of their abode. The poor never come to their door without being received, and never leave without being fed. There is soup and bread for them at all times. If they wish to stay the night, there is a bed for them:—in fact, there is a room in the farm-building especially set aside for this purpose. In winter, hospitality extends even further. The poor then are lodged in the bake-house. They are fed and provided with a warm shelter secure from the cold.

"I shall never forget a simple answer given me on this subject by the 'master' for the time being. Curious to learn the small details of the establishment under his direction, I went over the buildings with him. Passing through one court, I saw several large dogs, which at once began to bark. 'Do not be afraid,' he said, 'they only bark to give me warning. They are not dangerous: we train them not to bite.' 'Why should they not bite?' I asked. 'Surely, your safety depends on their doing so.' 'Oh! a beggar often comes to us in the night time. At the noise of the dogs we rise to take him in; and we would not have them do him any harm, or prevent his entering.'"

All contemporary authors, who have treated of these communities, assert that they secured to the peasants competence and happiness[1]. It appears that at the close of the middle ages, when a definite order was established in feudal society, agricultural production and the well-being of the rural classes had attained a far higher level than under the centralized monarchy of the seventeenth century[2]. Writers on customary law affirm that when the dissolution of these associations came to pass, it was actual ruin for people who had before lived in abundance. What shews that they must have been in harmony with the social requirements of the time, is that we find them in every province, in Normandy, Brittany, Anjou, Poitou, Angoumois, Saintonge, Touraine, Marche, Nivernais, Bourbonnais, both Burgundies, Orléanais; in the Chartrain district, in Champagne, Picardy, Dauphiné, Guienne; alike in the east and the

[1] "It is in communities that the *mainmortables* grow rich," says Denis Lebrun, *Traité des Communautés*, p. 17. "The labour of several persons united together," says Dunod, "is more effective than if they were all independent. Experience teaches us that in the province of Burgundy the peasants of *mainmortable* places are in much easier circumstances than those who live in the *franchise*, and that the more numerous the family, the more wealth it accumulates."

[2] There is a complete study of this curious phase in the economic history of France, in a note of the Belgian historian Moke on *La richesse et la population de la France au quatorzième siècle*. See *Mémoires de l'Académie de Belgique*, vol. xxx.

west, the centre and the south[1]. "The association of all the members of the family under one roof, on one property, with a view to joint labour and joint profits," says M. Troplong, "is a general and characteristic fact from the south of France to its opposite extremities." (*Commentaires sur les sociétés civiles*, Préface). We may, then, affirm that under the old

[1] The existence of these agricultural societies, so far from being an exceptional fact, was, on the contrary, general and constant until the eighteenth century. The following quotations admit of no doubt on this point.

In La Marche there was no community between husband and wife, except by express convention; and yet G. Brodeau, in his commentaries, tells us that "this custom is sanction and authority for communities and associations of relatives or strangers, and is *for the maintenance of the family*."—"These societies are not only frequent, but general, and even necessary, *selon la constitution de la religion*, inasmuch as the exercise of husbandry, which consists in tilling the ground and feeding cattle, requires a number of persons" (Guy Coquille, on *Nivernais*, p. 478).

"We have several of these societies in Berry and Nivernais, principally in the houses of *mages*, which, by the custom of the country, all consist of assemblages of persons living together in community." (Jean Chenu, on *Arrêts de Papon*, 1610).

"Formerly," writes La Lande in 1774 (*Cout. d'Orléans*), "it was a *general* custom in this kingdom for a tacit association to be formed between several persons living in common under the same roof for a year and a day......Tacit associations are more especially the rule in villages, where there are large families, which live in community under the command and direction of a chief, usually the oldest member of the society. We find clear instances in Berry, Nivernais, Bourbonnais, Saintonge, and other places."

"This kind of community and tacit association was formerly in *general* use," says Boucheul (*Poitou*, art. 231).

"Anciently, tacit association among persons living together, with common purse and common expenditure, was a *universal* custom in the kingdom, as is shewn, on the authority of Beaumanoir, by Eusèbe de Laurière in his dissertation at the end of the Works of Loisel, fol. 12, 13" (Valin, *Cout. de la Rochelle*).

"Anciently," says Valin (*La Rochelle*), "tacit association between persons other than husband and wife, living together with joint purse and joint expenditure was general in the kingdom."

"It seems," says Denis Lebrun in his *Traité de la Communauté*, "that we are compelled to admit this as a general usage in rural districts, where communities are so common, even in customs which do not mention them."

"The origin of these associations of inhabitants, *such as we see them today*," writes Dénisart in 1768, "is not well known. We may suppose they owe their origin to Christianity, which gradually diminished the rigour of slavery, in which the people were subjected to their lords. In France in the earliest days of the monarchy there were but two classes of free persons, the nobles and the ecclesiastics. All commoners were serfs."

"At the present day community is held in slight estimation," says M. Troplong (*Commentaires des sociétés civiles*, preface, *passim*). "The Romans spoke of them with enthusiasm, and put them in practice on a large scale...But the middle ages pre-eminently were an epoch of extensive association. This was the period which gave birth to the numerous societies of serfs and labourers, which covered the soil of France and made it productive. This period, too, multiplied the religious communities, whose benefits were so great in reclaiming land and establishing themselves in the midst of depopulated country. Then, probably, there was less talk of the spirit of association than at present, but the spirit was active and energetic." These quotations are borrowed by the author from M. Bonnemère, *La com. rurale*, p. 39.

system agricultural labour was carried on in all parts of France by cooperative associations of peasants, exactly as it is at the present time among the southern Slavs. Thus in the middle ages, work in all its forms was executed by associations, by religious communities, by peasant communities, or by craft communities. Laferrière has succeeded in putting this fact in a strong light: "The spirit of association, revived by Christianity, extended its salutary activity over the customs of the middle ages. It was under the protection of associations of every kind, by community of labour and habitation, by corporations, by societies for public and private profit, and under the influence of the spirit of social and Christian fraternity inculcated by them, that the serfs, the poor labourers, the artisans and craftsmen, the commercial classes, the people of the towns and country alike, improved and developed their condition of life. Isolation would have been their death; association made them live and grow for better times."

As to the time and manner of these family communities disappearing we have no information. Profound change in the social organism of the rural districts has always been effected gradually, without attracting the attention of historians. Up to the seventeenth century, *terriers*, and other titles, make frequent mention of societies of persons "with associated joint property." From the sixteenth century, jurists shew themselves less favourable, and, as time goes on, even hostile to the system of indivisibility. As soon as the spirit of fraternity, on which it was based, grew weak, this system gave rise to many difficulties and disputes, because it rested on custom and not on any written code. It had to encounter two sources of ruin: one in the spirit of individuality characteristic of modern times; another in the passion for clearness and precision in juridical matters, which the jurist imbibed from the study of the Roman law. Moreover, the successive disappearance of serfage and *mortmain* took away from these associations one of the most powerful reasons for their existence. So long as the serfs and *gens de mainmorte* had no right of succession except in the family community, they could not escape from the system of collective property; but, when once the rights of the lord were

[1] Laferrière, *Hist. du droit français*, vol. II. p. 591.

confined to receiving, under the form of various payments, the equivalent of the rent-service, the peasants could yield to the spirit of individuality which urged them to make independent properties for themselves by means of partition. The progress of industry, the improvement of roads and the extension of commerce also led the rural population to rouse itself and cast its eyes upward. New aspirations were sure to be fatal to institutions formed for the protection of cultivators subjected to the invariable rules of ancient customs.

Family communities survived from the earliest days of civilization up to a modern date. When the desire for change and improvement in everything took possession of men, they gradually disappeared with other traditions of earlier ages. Yet, in the seventeenth and eighteenth centuries, there still existed many of these rural associations[1]: *terriers* and acts of partition make frequent mention of them; but we find them exciting an almost universal hostility. A report presented to the provincial assembly of Berry in 1783, and analyzed by M. Dareste de la Chavanne[2], proves clearly how the sentiments of egotism and individuality were to bring about the destruction of an institution, which could only last by mutual confidence and fraternal understanding. It is only in the most

[1] M. Préveraud states that in France the communities disappeared rapidly from the end of the 15th century. Very few survived till the eighteenth. Their few last representatives sold their lands to citizens of the towns or persons who replaced them by tenant farmers. *L'Eglise et le Peuple* by E. Préveraud, Paris 1872, p. 181.

[2] The author of the report, who attacks the communities, declares that the one object of the members of them was mutual deception for the advancement of their private interest. "We may see," he said, "a member of a community buy or sell cattle on his own account, while the 'master' of the community has not sufficient money to purchase an ox in the place of one that has died or been lamed. None of the partners lets his own gain be known; no one buys immoveables, and if they have hives or sheep, the knowledge that the affairs of the association are going to ruin is sufficient to make them conceal their moveable effects." The report further states, that, as each one wishes to benefit by the advantages of association without taking part in its expenses, it follows that with many hands very little work is done. Besides, the chief of the community administered and did not labour. The other associates, having no interests to manage, passed their lives in ignorance and inactivity. The picture is perhaps too gloomy; but, at any rate, it reveals two certain facts,—the opposition which the existence of these communities encountered, and the spirit of individuality which was destined to bring their ruin. The same causes are acting in the same way at the present day among the Southern Slavs. Economic evolution is everywhere very similar, even in countries very distant and very different from one another.

remote provinces, such as Nivernais, Auvergne, and Bourbonnais, that any trace of the system has been preserved to recent days.

The elder Dupin has described one of these communities, which he visited about 1840, in the department of Nièvre. The details which he gives are so characteristic that it may be well to quote them.

"The group of buildings composing the village of the Gaults is situated on a small hill, at the head of a beautiful valley of meadow-land. The principal dwelling-house has nothing remarkable in its exterior; in the interior, on the ground-floor, is a vast hall with a large fireplace at each end, the mantelpiece being as much as nine feet across; but these dimensions are none too large to allow room for so numerous a family. The existence of this community dates from time immemorial. The titles, which the 'master' keeps in a vault, go back beyond 1500, and they speak of the community as already an ancient institution. The possession of this corner of the land is retained in the Gault family, which, by the labour and economy of its members and the union of all profits, has accumulated a property of more than 200,000 francs; and besides this portions have been paid to females passing by marriage into strange families[1]."

M. Dupin points out very clearly the juridical features of these institutions:

"The capital of the community is composed of four parts: first, of the original land; secondly, of acquisitions made with savings for the common account; thirdly, of beasts and moveables of all descriptions; and fourthly, of the common cash. Besides this, every one has his *peculium*, composed of his wife's portion and the property she has received by succession from her mother, or which has been given by gift or legacy. The community only counts males as effective members; they alone are included in the number of heads in the society. When the daughters marry a portion is given them in cash. The portions, which were originally very trifling, have risen in recent times to as much as 1350 francs. When once this portion is paid, the daughters and their descendants have no further claim on the property of the community. As to strange women who marry members of the community, their portion is not merged in the common stock, inasmuch as they are not intended to acquire any personal right in the community. When a man dies, he transmits nothing to any one by succession. There is a head fewer in the community, which continues unbroken among the others, and takes the portion, possessed by the deceased, not by any title of succession, but by right of *non décroissement*, or non-diminution. This is the original, fundamental condition of association. If the deceased leaves children, and

[1] Dupin, *Excursion dans la Nièvre*, 1840.

they are males, they become members of the community, in which each is reckoned, not by hereditary title, the father having transmitted nothing to them, but from the sole fact that they were born in the community and for its benefit: if they are females, they have only a right to a portion. The peculiar, distinctive nature of these communities is well shewn. It differs from that of ordinary conventional associations, where the death of one of the members entails the dissolution of the society, as the industry pursued is optional, and personal capacity is requisite in such societies. The ancient community was of another character. It formed a sort of corporation or college,—a civil person, like a monastery or borough, which is perpetuated by the substitution of new constituent members, without any change in the actual existence of the corporation, either in its manner of life or in the government of its affairs."

Further on, in the commune of Préporché, M. Dupin found traces of a community once numerous and flourishing, that of the Gariots. Since the revolution, it had effected a partition of its property, and the majority of the members had come to ruin. The large rooms had been divided; the great fire-place was also divided by a partition-wall. Their houses were dirty and poorly built. The inhabitants, ill-clothed and savage looking.

"At Gault, all was comfort, health, and gaiety; in the Gariot village, all was gloom and poverty...I certainly do not deny the advantage of separate property, and the benefits resulting from everyone having his house, his garden, meadow, and arable land, all well cultivated and well cared for. But well-directed association has also its advantages. I have pointed out its happy effects, and where it yet exists with good results, my hope is that it may survive with unabated vitality. I believe that, for the cultivation of their farms, it would be especially advantageous for the peasants to hold together. A numerous family is sufficient in itself for agricultural operations; if it is weak, it must be supplemented by hired servants, who require high wages, and consume the greater part of the profits, without giving the same attention to the cultivation of the soil or the care of the cattle, as the masters themselves would do. Moreover, the children by remaining with their parents, profit alike by their instruction and example; whereas, when separated from them and put to service too young, they are liable to corruption and often overtaken by destitution. On the other hand, the practice of frequent and excessive subdivision, produces a *morcellement*, such that the children of the same father can no longer live in the dwelling-house, and the fragments of land become too small to be well adapted to cultivation."

M. Doniol has seen several of these rural communities, and he boasts of their excellence as a "social institution," (*Hist. des Classes Rurales*, 2nd Edit. p. 164). M. Leplay, in his instructive

work, *L'Organisation de la Famille*, shews minutely the position of a patriarchal family in Lavedan, and the evils brought upon it by its partial dissolution.

Emile Souvestre, in his work on *Finisterre*, mentions the existence of agrarian communities in Brittany. He says it is not uncommon to find farms there, cultivated by several families associated together. He states that they live peacefully and prosperously, though there is no written agreement to define the shares and rights of the associates. According to the account of the Abbé Delalande, in the small islands of Hœdic and Houat, situated not far from Belle Isle, the inhabitants live in community. The soil is not divided into separate properties. All labour for the general interest, and live on the fruits of their collective industry. The curé is the head of the community; but in case of important resolutions, he is assisted by a council composed of the twelve most respected of the older inhabitants. This system, if correctly described, presents one of the most archaic forms of agrarian community. In 1860, the commissioners for the prize of honour for agriculture in the Jura were struck with a fact which the author of the report took care to put prominently forward: almost all the farms are directed by a group of couples, of patriarchal habits, living and labouring in common. There are, then, still existing here and there traces of the ancient communities, which for so many centuries protected the existence of rural populations; but, like those representatives of primitive Fauna which are on the point of disappearing, it is to the wildest and most remote spots that we must go in search of them. One cannot refrain from a feeling of regret, on thinking of the complete ruin of institutions inspired by a spirit of fraternity and mutual understanding unknown to the present age. Formerly they were the protection of the serf against the rigours of feudality; and, what was not less important, presided at the birth of small property, which is characteristic of the agrarian condition of France.

We shall see how in England the nobility took advantage of its supremacy in the state to create *latifundia* at the expense of the small properties, which it gradually annexed as it made their existence more and more difficult. How was it that in

France, where the nobility were armed with even more excessive privileges than in England, and the peasants were far more crushed and destitute of rights, a similar economic evolution was not produced? Why, even under the old system, did small property make such progress in the country where everything was against it, and disappear in that where political liberty seemed to afford it complete security? I have never yet seen any explanation of this striking contrast presented by the two countries. The chief cause seems to me to be that agrarian communities were preserved in France until the eighteenth century, whereas they disappeared at a very early date in England. So long as they existed, they formed an obstacle to the extension of the lord's domain: in the first place, because their existence was secure and their duration permanent; secondly, because the principle of collectivity gave them a great power of cohesion and resistance: and, finally, because their property was, one may say, inalienable, and was protected from excessive subdivision and the vicissitudes of partition resulting from succession or sale. If these associations could survive through the whole of the middle ages without material change, like the monasteries, it was because they had a similar constitution to the monasteries. Being corporations, they had the perpetuity of corporations. When the peasants dissolved these communities, and created small rural property by partition, the nobility had lost all power of extension, and the Revolution was already at hand, which was to destroy their privileges and to afford the rights of the cultivators a full security. Between the moment when the members of the communities transformed themselves into small proprietors, and that when the Code Civil appeared to finally emancipate them, the feudal aristocracy, already enfeebled, had not had the time to employ its wealth and its supremacy for the enlargement of its domains. In England, on the contrary, communities ceased to exist at a period when the nobility were still all-powerful. The small proprietary cultivators found themselves isolated, and unable to defend their rights. Their lands were consequently usurped one after another by the lord of the manor. The agricultural population acquired individual property too soon; and so *latifundia* were constituted at their expense. If collec-

tive property had been maintained longer, agricultural associations on disappearing would have left in their place a nation of proprietors, as in France. It is a remarkable fact that by the agrarian system of primitive times falling into desuetude in England earlier than in other countries, the feudal nobility has been enabled to perpetuate itself there, and that it is the premature establishment of individual property which has prevented the creation of a rural democracy such as we see in France.

CHAPTER XVI.

FAMILY COMMUNITIES IN ITALY, IN GERMANY, AND AMONG THE ESQUIMAUX AND OTHER NATIONS.

THE system of family communities was, also, formerly very general in Italy, and has left many traces in the various provinces. M. Jacini in his excellent work on Lombardy, has described those which are to be met with in the hill-district of that country. They exist in combination with metayage, and greatly facilitate the maintenance of the system. The proprietor regards associated cultivators as more desirable tenants than isolated householders. For the resources of the association are larger; and it offers better security for the payment of rents in kind, and for the faithful execution of contracts. It is better able to carry on large cultivation, and to support the losses of bad years and all the inevitable accidents of agricultural undertakings.

The communities as a rule enjoy a comparative competence, and are remarkable for what are known as patriarchal virtues. These associations are usually composed of four or five couples living in common in a large farmstead. They recognise the authority of a chief or *reggitore,* and of a housewife or *massara.* The *reggitore* regulates labour, manages all buying and selling, and invests the savings, subject however to the advice of his associates. The *massara* has charge of all household matters. The head of the stables is called the *bifolco;* he is the chief overseer of the labour. These ancient institutions are yielding to the passion for independence, the desire of growing rich,

and, in a word, to the spirit of modern times, just as they are yielding on the banks of the Danube, or as they yielded in France in times past. M. Jacini has thoroughly analysed the various sentiments which tend to produce their final annihilation. Men begin to ask: "Why should we and all our belongings remain in subjection to a master? It were far better for each to work and think for himself." As the profits derived from any handicraft form a sort of private *peculium*, the associates are tempted to enlarge this at the expense of the common revenue, and self-interest begets dissensions and quarrels to disturb the fraternal concord. The women especially seem to incite their husbands to insubordination. The authority of the *massara* is burdensome to them, and they demand a home of their own. Every one sees clearly the advantages of the patriarchal association, that his living and lodging are more secure, that there is more support and less disastrous results in case of illness, and that agricultural operations are more easily carried on; yet, in spite of all, the craving to live independently carries him away, and he quits the community.

Among a race in the extreme north, and under physical conditions entirely different from those of Italy, we find family communities with identically the same characteristics; a manifest proof that habits are not fashioned by climate. The Esquimaux of North America and of Greenland live in very large buildings which contain several families,—often as many as ten. Each individual is absolute owner of his arms and implements, but even the quantity of them is limited by custom; while the boats, sledges, dogs and provisions belong to the whole community, as also does the hunting-ground; generally, too, the produce of fishing is divided among all[1].

[1] *Tales and Traditions of the Eskimo*, by Dr Hears Rink, director of the royal Greenland Board of Trade. London, Blackwood, 1875. See also the analysis of the work by Mr Cliffe Leslie, *The Academy*, January 17, 1876. Mr Leslie, speaking of these family communities, says: "In the society thus constituted we see, in the first place, besides some development of individual proprietorship, the agnatic and patriarchal family which appears in societies far advanced beyond the fishing and hunting state, with a custom of primogeniture which bestowed an inheritance of patriarchal authority and responsibility along with the chief family property. When a man died the eldest son inherited the boat and tent along with the duties of the provider. If no such grown-up son existed, the nearest relative took his place and adopted the children of the deceased as his foster-children. The inheritance represented obligations and burdens rather than personal gain." The association of several families in one

Family communities also existed in Germany under the name of *cognationes, magschaften, konne, geschlechter*, and were long maintained there[1]. They cultivated their domain for the common profit, formed an association for common defence (*gesammt-gewere*), and lived at the common expense, *in einer cost ungetheilt,—à un pot et à un pain.*—The right of inheritance was based not upon ties of blood, but upon the life in common, and only applied to relations living in community (*kinder in der were*), whether collaterals or even strangers admitted by adoption. These communities were maintained under the feudal system, and did not disappear till after the Thirty Years War. A remnant of them survived in the custom which forbade the head of a family to alienate its property, or even to change the nature of the land by clearing, planting or otherwise, without the consent of the kinsmen. In Chapter IX. we saw that these family communities existed alike among the tribes of America and the Semitic races in Africa, and that they still survive in Russia, although since the abolition of serfage the spirit of individualism has been rapidly destroying them.

The more or less absolute exclusion of females from the inheritance is a proof of the existence of family communities,

house is clearly analogous to the house community with which Sir H. Maine and M. de Laveleye have made us familiar as still existing in parts of Eastern Europe, and formerly among the peasantry of France. Like the French house-community, that of the Eskimo has assumed the form of a voluntary copartnership; but we believe we may confidently say of the latter what Sir H. Maine does of the former (*Early History of Institutions*, p. 7), that originally "these associations were not really voluntary partnerships, but groups of kinsmen." Again, the Eskimo village is the analogue to the Indo-Germanic village-community, with the distinction that it is a fishing, not an agricultural or pastoral community, with rights of common user of the station and landing-place for whaling, seal-hunting and fishing, instead of common pasture and wood-rights. We might add, that the vestiges of a larger tribal community, analogous to the Teutonic *pagus*, seem traceable in Dr Rink's account of the customs of the Greenlanders, although he makes no such suggestion. Animals of great size, especially whales, and game captured in times of great scarcity, were the common property of all the inhabitants of neighbouring hamlets (p. 31); and Dr Rink's observation (p. 79), that the ancient principle of mutual assistance and semi-communism which still prevails among the Greenlanders may have sprung from a feeling of clanship, is obviously applicable to an original feeling of tribal consanguinity, or connexion by adoption, on the part of the inhabitants of a group of hamlets; although local connexion or neighbourhood has taken the place of the tie of a common ancestry. When we take into account, further, the periodical meetings of the inhabitants of neighbouring hamlets for both festive and judicial purposes, the analogy to the *pagus* of the ancient Germans appears nearly complete."

[1] Von Maurer, *Geschichte der Frohnhöfe*, B. IV. p. 281—350.

which afford the best explanation of the fact. M. Fustel de Coulanges (*La cité antique*, Liv. II. c. VII. § 2) thinks that the reason for this exclusion is the incapacity of females to perform the sacrifices. But among the Germans, under the feudal law, and also among the Mussulmans, females only succeed in a more or less limited degree; and among these nations the ancient sacrifice did not exist. Everywhere where we find family communities, alike in France in the middle ages or in Modern Servia, the daughters are excluded from the succession. As in the Laws of Manu[1], and as at Athens, they are only entitled to a marriage portion. The reason of this exclusion is manifest. The whole social order is based on the families, which have to preserve intact the patrimony from which they derive their support. If females inherited, seeing that by marriage they pass into another family, they would, by claiming their share, effect the dismemberment of the joint domain, and the consequent destruction of the family corporation. When we find the same custom, the exclusion of females from the succession, existing in Slavonic countries, in German countries within the pale of Christianity, and also in India, and pagan Greece and Rome, we are bound to seek its origin in some motive economic rather than religious; and this motive is the preservation of the *gens*, the patriarchal family, based upon the indivisibility of the family property, a system which everywhere succeeded that of the village community.

"After the death of the father, the sons shall divide the inheritance," says the code of Manu. At Athens daughters do not inherit[2]. Solon decides "that division shall be made among the sons." (Isæus, VI. 25.) At Rome the principle appeared, but in a modified form: the married daughter was excluded from the succession, and the unmarried woman could bequeath nothing except with the consent of the agnates, in whose guardianship she was. In the codes of German origin, females do not inherit land, except in default of male heirs: *De terra salica in mulierem nulla portio hæreditatis transit* (*Lex Salic.* Tit. 62, c. 6). The oldest manuscripts do not contain the ad-

[1] "The law and customs of Hindoostan divide the inheritance between the sons and other agnates. Females only inherit on failure of all male heirs." Sir George Campbell, Essay before quoted, p. 175.

[2] Demosthenes, *in Bœotum*; Lysias, in *Mantith.* 10; Isæus, X. 4.

jective *salica*. Females were therefore excluded absolutely from succession to land[1].

There was the same principle among the Anglo-Saxons[2]. In Northern Scandinavia, where ancient German traditions survived longer than anywhere else, females were excluded from the succession to land until half-way through the middle ages. Among the Anglo-Saxons they ultimately obtained a portion of the *Bokland*, but no *Folkland*. Among the Irish Celts females were excluded from the inheritance[3].

Among the Burgundians, male children succeeded their parents, to the exclusion of female children[4]. The code of the Alamanni, like other laws of German origin, excluded daughters from the succession[5]. Even the Ripuarian law, which is far the most favourable to the rights of females, excludes them from the succession, whenever there are any male heirs: *Sed dum virilis sexus extiterit, femina in hæreditatem aviaticam non succedat.* In the formularies of Marculf we read: *Diuturna sed impia consuetudo inter nos tenetur, ut de terra paterna sorores cum fratribus portionem non habeant.* (Marc. *Form.* I. 8.) The spirit of the German laws, says Gans, is to favour the males to the exclusion of females[6]. Laferrière tells us that the customs of Auvergne and the Bourbonnais excluded the daughters from succession to the father[5]. Even in the eighteenth century, in Provence, the daughters had not an equal share with the sons in succession *ab intestato*[8].

The custom of Champagne, collected in 1509, still declares, in successions in noble families, the share of the eldest son is to be first deducted, and then the remainder divided among sons and daughters alike, except that a son takes twice as much as a daughter. (Tit. I. § 14.) The custom that prevailed

[1] See Waitz, *Das alte Recht der sal. Franken*, 1846, p. 121 .

[2] See *Lex Angl.*, tit. VI. 5; Canciani, *Barbar. leges aut.* t. III. p. 50, note I.; *Lex Franc. Chamav.* in the *Revue hist. du droit franç. et étr.* 2, I. (1855), p. 442.

[3] Sir James Ware, *Antiquities*, c. XXX.: "By this custom among the Irish, the inheritance of the deceased (below the degree of *Thanist*) was equally divided among the sons both lawfully and unlawfully begotten, females being wholly excluded."

[4] *Lex Burg.*, tit. 14, § 1.

[5] *Lex Alam.*, tit. 51, § 2.

[6] *Hist. du droit de succession en France au moyen-âge.* Trad. de L. D. de Loménie, p. 61, 1846.

[7] See *Hist. du droit franç.*, 1836, 2, I. 6, 199.

[8] Lanthenas, *Inconvénients du droit d'aînesse*, p. 16.

in the South of France, of making the daughters, on their marriage, renounce all rights of succession, can only be explained by reference to the original exclusion[1].

Among the Albanians, who have preserved intact their ancient customs, the daughters only succeed, when necessary to prevent the property passing from one family to another[2]. In the Mussulman law, male children are the only true heirs, *Aceb;* females are only entitled to a share always very inferior to that of the sons, being a mere deduction made before division. In the district of Liége females did not at one time succeed to registered lands situated outside the towns: *Censaria, extra oppida et francisias sita, pertinent ad filios tantum et non ad filias*[3].

Another trace of the family community is to be seen in the custom, which is found everywhere, by which the alienation of immoveables was not valid without the consent of the kinsmen[4], or was liable to "*retrait.*"

[1] Gide, *Étude sur la condition privée de la femme*, p. 44, and Laboulaye, *Droit de succession des femmes.*

[2] See the interesting work of M. Albert Dumont, *Souvenirs de l'Adriatique*, *Revue des Deux Mondes*, 1er Nov. 1872.

[3] Hénaux, *Hist. de Liége*, p. 127 (Third Edit.).

[4] The *Mirror of the Saxons* (13th century) says (I. 52, 34): "If any one has sold or granted an immoveable or a serf without obtaining the consent of the agnates, they may claim the property alienated without being obliged to repay the purchase-money. Even with this consent and the intervention of justice, no one may alienate all his immoveables; he must retain half-an-acre of land, or at least a space of sufficient size to form a court in which one can turn a carriage." This is the inalienable *heredium* of Sparta and Rome. See Zachariæ, *Geist der deutschen territorial verfassung*, p. 226. The vendor's kinsmen and even the co-occupiers of the *mark* had a right of pre-emption (Maurer, *Gesch. der Markenverfas.*, p. 184; *Gesch. der Dorfverf.*, I. p. 320; *Gesch. der Fronhöfe*, III. p. 74).

CHAPTER XVII.

THE ORIGIN OF INEQUALITY IN LANDED PROPERTY.

PRIMITIVE societies, at the moment of passing from the pastoral system to the agricultural system, are composed, as has just been shewn, of groups of men united by the bonds of a common descent. All are proprietors of an equal undivided share in the common territory; all are equal and free; they are their own administrators, their own judges, and the electors of their own chiefs. The different groups, speaking the same dialect and having a common origin, lend one another assistance against an enemy, and deliberate from time to time on the common interests of attack and defence. No authority is exercised, except by delegation; no decision taken, except after discussion by a majority of votes. No functionary has any peculiar power by virtue of birth or divine right. There is nothing resembling supreme power imposing its wishes on its subjects. The State, as developed in the West or at Rome, exists neither in fact nor name. The individual is sovereign, subject only to the sovereignty of juridical customs and religious ideas. The nation is thus composed of a large number of small autonomic republics united by a federal bond. Such was the organization of Germany, in the time of Tacitus, and such is that of the United States in our own days. It has hardly been modified in its course; individual ownership has simply replaced agrarian community. In America, as also in Germany, the elementary molecule of the social body is the commune, or township. The very name is preserved—*town* is the *zaun*, the *tun*, the inclosure or village. In the township also the citizens assemble to elect functionaries, to vote taxes, to determine the

necessary labours, and to frame regulations. There is no hierarchy of functionaries imposing administrative decisions. The townships enjoy complete autonomy, under the empire of general laws, to which the judges insure respect; their federation forms States, and the federation of States the Union. In the American democracy we find all the characteristics of primitive democracies:—individual independence, equality of conditions, elective powers, direct government by the assembly of inhabitants, and trial by jury.

Montesquieu was not mistaken in saying that the English constitution came from the forests of Germany. At their starting point, patriarchal democracies have universally the same characteristics, whether in India, Greece, Italy, Asia, or the New World; but almost universally also the primitive equality has disappeared; an aristocracy springs up, feudalism is created, and then the royal power gains strength and subjects everything to its absolute empire. The *mark*, in primitive times, formed the political and economic unit; it was the origin of the independent and autonomic commune. Feudalism, and royalty later on, could not suffer its independence, and succeeded almost everywhere in taking away its ancient privileges. Only a few isolated countries, such, for example, as Servia, Frisia, Switzerland, the district of Ditmarsch, and the valley of Andorre, have preserved the ancient free institutions.

How, then, was an aristocracy, and, subsequently, despotism introduced into societies, in which the maintenance of equality was guaranteed by a measure so radical as the periodic partition of lands; in other words, how were primitive democracies feudalised? In many countries, such as England, France, India, or the Italian peninsula, inequality and an aristocracy were the result of conquest: but how were they developed in such countries as Germany, which know nothing of conquerors coming to create a privileged caste above a vanquished and enslaved population? Originally we see in Germany associations of equal and independent peasants, like the inhabitants of Uri, Schwitz and Unterwalden at the present day. At the close of the middle age we find in the same country a feudal aristocracy resting more heavily on the soil and a rustic population more completely enslaved than in England, Italy or

France. In consequence of what changes in agrarian organization was this surprising transformation effected? This problem in social history deserves close attention.

Community of lands affords a very firm basis to primitive societies; it maintains equality, and establishes close union among all the members of the clan. It ensures them perfect independence by making them all proprietors. This is what is necessary with a warlike people. The Greek legislators, whose opinions Aristotle mentions, invariably held in view the maintenance of equality among the citizens; but they thought to attain this end in Greece either by limiting the extent of property which a single individual might hold, by regulating the portions given to young women, or by establishing common meals. The customs of village communities attained this result with far greater certainty. But individual property and inequality nevertheless invaded the equality of these associations in this way.

We have seen that in Java the inhabitant of the *dessa,* who reclaims a portion of the wood or waste, retains the enjoyment of it during his life; and that, in certain provinces, he can even transmit it to his heirs as private property. The right of the first occupant is also recognized in Russia. "If a Russian peasant," says M. Haxthausen, "asks authority of the village to establish himself in the forest, he almost always obtains it; and he acquires over the land so reclaimed, in his capacity of first occupant, a right of possession transmissible by succession and always recognized as valid by the commune." The same right existed in the German *mark.* Whoever inclosed waste land or a portion of the common forest to cultivate it, became hereditary proprietor of the same. Lands so reclaimed were not subject to partition; for this reason they were called *exsortes* in Latin, or *bifang* in the German, from the verb *bifâhan,* which means to seize, to surround or inclose. The word *porprisa,* in French *pourpris, pourprinse,* has precisely the same sense. Many titles of the earliest times of the Middle Ages give as the origin for the property, to which they relate, occupation in the desert or on unoccupied land, *in eremo.* In France, charters of the first two dynasties make frequent mention of it. The Customs speak of it as an ordinary mode

of acquiring property. M. Dareste de la Chavanne quotes the custom of Mount Jura, which assigns to the first occupant the free and independent ownership of all reclaimed lands[1]; but it was strictly forbidden to inclose any portion of the common land or to set up any boundaries, except in presence of the other persons entitled, *consortes*, and with their consent[2].

Even in the time of Tacitus equality within the *gens* was not absolute; some families had more power, wealth, or slaves, and even obtained a larger share in the partition. It was only such families that could create an isolated domain in the forest by the labour of their dependents. This domain was free from communal authority and from the compulsory cultivation, or *Flurzwang;* it was already a kind of separate sovereignty. On this limited and enclosed space, temporary annual and nomadic cultivation was impossible. It was therefore necessary to have recourse to a more intensive method of agriculture. It was probably on such land that the triennial rotation of crops was first introduced. The Frankish kings possessed many of these domains in different parts of the country. Several of Charlemagne's villas had this origin. By this title he was the proprietor of a domain (*curtis*) in the diocese of Salzburg, of great extent, comprising fifteen farms, vineyards, meadows, and woods. In this manner there arose in all parts, side by side with and in addition to the common territory, which was subject to partition, private, independent properties, seigniories, or *curtes nobilium*. The enclosed land was called *ager exsors*, as being free from the assignment by lot. In Denmark these independent domains were called *ornum:* they were surrounded by a ditch and marked out by boundary-stones. They were regarded as privileged lands, being exempt from all communal payments, and escaping re-partition "by the cord." All the charges imposed on the commune were borne by the lands of the collective domain. The proprietor of the *ornum*, having no right to the enjoyment of the pasturage and forests of the

[1] Dareste de la Chavanne, *Histoires des classes agricoles en France*, chap III. He also quotes a plea of 852, in which, on a question of property, one of the parties expresses himself thus: *Manifestum est quod ipsas res* (the property in dispute) *retineo sed non injuste, quia de eremo eas traxi in aprisionem.*

[2] *Nullus novum terminum sine consortis præsentia aut sine inspectore constituat.* Lex Burg. tit. III. 1, v. *De terminis et limitibus.*

community, was naturally exempted from taking part in the payments in labour or in kind which the members of the commune had to perform. This immunity gave to independent domains a certain superiority, which, strengthened by time, grew into a kind of supremacy or suzerainty.

In the conquered Roman provinces, the Germans appropriated one-third or one-half of the lands; and as they were small in numbers, the share of each was frequently very large, and was composed of portions situated in different localities.

Another circumstance tended to undermine the ancient agrarian institution and to destroy the primitive equality. We know that a member of the commune could only dispose of his share with the consent of his associates, who had a right of resumption: but this right could not be exercised against the Church. Accordingly, in these days of religious fervour, the faithful frequently left to the Church all that they possessed, not only their house and its enclosure, but the undivided share in the *mark*, attached to it. Thus the abbeys and bishoprics became co-proprietors in the communal property. This condition being in complete discord with primitive agrarian organization, the Church withdrew from the community the portions belonging to it; enclosed them, endeavoured to extend them, and had them cultivated by tenants or serfs. Already, by the end of the ninth century, one-third of the whole soil of Gaul belonged to the clergy[1].

When the population increased, the large primitive *marks* were subdivided; and the subdivisions, having less and less importance and power in proportion as they became smaller, had no longer sufficient strength to withstand the encroachments and usurpations of feudalism and royalty. Almost everywhere, a large portion of the common territory became the domain of the Sovereigns. Switzerland, Alsace, and the Palatinate, are the countries where documents give us the best opportunity of following the successive subdivisions of the *mark*.

From the moment when agricultural labour was executed

[1] See Roth, *Geschichte des Beneficialwesen*, pp. 248—253. It is hard to imagine with what rapidity property accumulated in the hands of the Church. The bishopric of Augsbourg, at the commencement of the ninth century, owned 1,427 farms, *mansi*, and the convent of Benedictbeuern, in Upper Bavaria, 6,700 in the year 1070.

by settlers and serfs, the cultivation of the soil was regarded as a servile occupation. The rich and powerful families stood completely aloof from it; and the free cultivators gradually lost in dignity and consideration, even in their own eyes. In consequence of the introduction of Christianity and the establishment of monarchies, about the fourth and fifth centuries, the mode of life of free men was completely changed. The wars of tribe with tribe, incessant in former times, became more rare: a certain order was established in society. The inhabitants of the villages no longer lived with arms constantly in their hands; and the German warrior was insensibly transformed into the German peasant. Those who had lands cultivated by tenants could live without working. They continued to practise the use of arms; and lived by war and the chase like the ancient German. They thus acquired the preeminence given by strength. Although Germany was never conquered, they attained to the same supremacy over their fellow-countrymen as the conquerors of Gaul obtained over the Gallo-Romans. It is not yet known precisely how the free cultivator of the second century became the serf of the thirteenth: but when one part continued the use of arms, which those who were exclusively devoted to agricultural labour had discontinued, the former succeeded in gradually enslaving the latter. Nevertheless, this profound change was not accomplished everywhere at the same time nor in the same manner: there are some districts, where the ancient organization and liberty have been maintained to our own times.

The clergy and the nobles, being owners of several domains, did not have them cultivated on their own account: they granted them on lease to free cultivators or families of serfs. Properties tilled by the former were called *mansi ingenuiles*: those tilled by the latter *mansi serviles*. The lease was frequently hereditary; the peasants paid the proprietor rent in kind or in labour; and free men also had in addition to render military service.

There is another question also which has not been decided very clearly. How did the feudal system, with its hierarchy of class subordinated to class, come to replace in Germany a system in which equality was guaranteed by the periodic partition of

the soil? The characteristic of the feudal system is the fief, the *feod* or *beneficium*, that is to say, land granted to a usufructuary as recompense for certain services to be rendered. The suzerain granted the life-possession of a domain, on condition that he whom he invested with it should follow him to the war or administer a portion of territory. Originally, of course, there was no question of administration or granting benefices, for the villages governed themselves in an independent manner, and the sovereign was merely a military chief elected by his warriors. Sir H. Maine, however, agreeing in this point with M. Laferrière, thinks that the origin of the feudal system was already disclosing itself in the juridical customs of the last days of the Roman Empire.

In the feudal system, there are two distinct sorts of tenure; military tenure, and censive tenure. Military tenure was that of the noble carrying arms: he had to follow his suzerain in war, assist him in his pleas, administer justice in his name, and, in fact, perform acts of government and administration. "Censive" tenure was that of the cultivator, who owed his superior payments in kind or in labour. It was an economic relation of the civil order.

These two forms of tenure existed in the Roman empire. The proprietors of *latifundia* understood that, instead of having their lands cultivated by slaves working badly under the supervision of a steward always inclined to rob his master, it was more to their advantage to grant the farm to *coloni*, enjoying the produce of their labour, in consideration of a share in the harvest.

It was to the interest of these *coloni* to cultivate well; the total produce was greater, and, consequently, while their condition was improved, the income of the proprietor was increased. In this way was created the class of *coloni medietarii*, or metayers, which has lasted till our own times. The condition of the serfs in Germany, as depicted by Tacitus, was similar to that of the Roman *coloni*. Each had his dwelling, the master merely exacting a certain rent in corn, cattle, or garments, as he would have done from a *colonus*. The Roman *precarium* and the *benefice* of the first period of the middle ages had the same characteristic, namely, a grant of enjoyment for life made by the proprietor, either gratuitously or in consideration of a rent.

Grants of *precaria* were frequent even under the Empire. Grants of benefices became even more so in the middle ages, because, in default of slave labour, they afforded a means of turning to account land which the proprietor could not cultivate himself. Long leases became also a very general mode of tenure. The proprietor granted the cultivator a hereditary right of occupation of the land, reserving the payment of a "canon," or annual rent, and of a fine in case of alienation. In the *emphyteusis*, as also in the case of the *colonus* or metayer, the double property, characteristic of "censive" tenure, is recognized, the suzerain reserving the eminent domain with the rents to which it entitles him, the cultivator having a hereditary right of occupation.

The Military tenure, or the *feod*, was also known to the Romans. On the confines of the Empire, along the whole length of the Rhine and the Danube, the State had granted lands, *agri limitrophi*, to veterans, who undertook to perform military service in case of need. This is precisely the system of frontier regiments organized by Austria on the Turkish frontier[1]. The State reserved the eminent domain; the veterans had possession on condition of carrying arms. Such also was the condition of the vassal with regard to his suzerain. The monarchs of German origin, under whom feudalism was established, had merely to imitate the system which they saw before them. The majority of these veterans moreover were themselves Germans, enrolled in the imperial armies and established on Roman territory for its defence. The other obligations of the feudal beneficiary, such as assisting the suzerain to portion his daughter and to equip his son, to protect them during minority, and to pay his ransom if he were made prisoner, were derived in some cases from the condition of the client, in others from that of the German *leude*.

We can also find germs of the feudal system in an ancient custom of the village communities. Among the lots of arable

[1] Even in ancient Egypt we find grants of lands as a reward for military service, which remind us of the Swedish *in-delta* and the feudal system of other countries. According to Herodotus (Bk. II.) the warriors enjoyed a peculiar privilege entitling them to twelve acres of land free from every kind of rent or tax......But they succeeded one another in the occupation of this land, and the same men never possessed the same lands. It was therefore the same system as Cæsar mentions among the Suevi (*Com.* IV. 1. 3).

land, some, as we have seen, were destined to serve as an *honorarium* for certain offices and certain crafts. These lands, so given as salary, evidently amounted to fiefs. The same custom existed in the Hindoo or Javanese village. The office or the craft, and consequently the lot of earth attached to it, was often transmitted from father to son. Hence there resulted a tendency to establish hereditary succession, which also displayed itself in feudal benefices, and eventually, as we know, triumphed under the last Carlovingians. But in a part of India, hereditary title to land was established in favour of the *Zemindars* and *Taluqdárs* by the English, and a single clause of law thus effected instantly a transformation in social order, which was only accomplished in Europe by a slow evolution of several centuries.

As the German sovereigns took no taxes, their only means of rewarding services was by granting benefices, or *feods*. The families, on the one hand, who had formed large domains for themselves by clearing land and by the creation of *manses* or farms, and the beneficiary lords, on the other, constituted a superior class of landed proprietors, whose power and riches increased with the advance of civilization. Below them, nevertheless, among the cultivators, whose condition was constantly growing worse, the ancient institutions of the *mark* long prevailed. Private property, it is true, was gradually introduced for the arable land, except in certain remote districts, as in Switzerland and the banks of the Sarre, where periodic partition survives to our own day; but the pasturage and forest remained common property, and allowed of the preservation of the administrative institutions of the *mark*.

At an early period the collective domain of the village was exposed to the usurpations of the sovereign and the feudal lords. The great wars, which followed the invasions of the sixth century, and the long duration of military expeditions, depressed the class of freemen. Many of them, to escape the demands and exactions of the counts and lords, who often despoiled them by open force[1], sold their property, or surren-

[1] Capit. III. c. 2. Anno 811.—*Quod pauperes se reclamant expoliatos esse de eorum proprietate.* See also numerous texts to the same effect in Maurer, *Einleitung*, &c. p. 210.

dered it, either to the sovereign or the Church, and received it back under the title of *censive* land, that is to say, subject to the payment of a rent. The class of small free proprietors thus insensibly decreased. From as early as the time of Charlemagne, inequality and the accumulation of property in a few hands were very great; the dependent peasants were no longer in a position to defend the domain of the *mark* with any success against the invasion of their powerful neighbours, who compelled the peasants to allow that the eminent domain of the waste and forest belonged to them. The law of the Ripuarians, Tit. 76, already speaks of the common forest as belonging to the sovereign: *in silva communi seu regis.* In a Merovingian charter of 724, Childebert III. disposes of the communal lands of Saverne. The lords had the forests enclosed; or else declared them *bannforsten,* that is, forbade the cultivators the use of them. Their principal object was to preserve them for hunting. These usurpations commenced under the Frankish dynasties, but were especially common in the twelfth and thirteenth centuries. The law of 1861, abolishing serfage in Russia, also takes away from the peasants, with a stroke of the pen, the hereditary right of use of the forest, transferring the exclusive property to the lord. At first the sovereigns did not dispose of such property without the consent of the people, but later on they dealt with it on their own personal authority.

Originally, all the inhabitants of the village assembled to try delicts and suits between the members, under the presidency of a chief elected by them, the *dorfgraf* (count of the village, also called *judex* or *major loci, centenarius, tunginus*). The lord, however, in almost every case, gradually usurped the right of nominating the judge or mayor of the village, the *dorfrichter* or *schultheiss.* As Von Maurer says, wherever seignorial rights were established, the ancient organization of the *mark* and its liberties disappeared. Seignorial justice took the place of judgment given by the assembly of villagers. At first, the lord's representative continued to summon the inhabitants round him to pass judgment; later on, he pronounced it by himself. The *mark,* which was originally a small independent republic, was thus reduced, by the successive usurpations of the feudal lords and the sovereigns, to nothing more than the collective

enjoyment of communal forest and pasture, in cases where they had been respected.

The Irish Brehon Laws enable us, better than any other ancient documents, to see how inequality of property and the predominance of the large over the simple cultivators were established among men of the same race, in spite of the original equality of all and the institutions designed to maintain it. These profound changes were accomplished in the same way in Ireland as in Germany and the rest of Europe. Originally, the chief of the clan was merely the first among a number of free and equal proprietors, by whom frequently he was elected. When the work of feudalization was complete, this chief was converted into the lord of the manor, the proprietor, in fact or in theory, of all the land formerly divided among the members of the tribe; and the cultivators were mere rustics or serfs, bound to render payments in labour or kind, for the enjoyment of the land of which they had previously been independent owners. This transformation, which gave birth to a landed aristocracy and to political royalty, was accomplished slowly and imperceptibly, by a series of insensible changes, which varied in detail in different countries, but everywhere followed the same general lines. In the *Brehon Laws Tracts*[1], which contain information concerning institutions separated by several centuries, we can trace the development of the power and privileges of the chief. There is no doubt that, in primitive societies, the soil was regarded as the collective property of the tribe. The chief exercised certain administrative functions; he led his men to battle, and received as reward the enjoyment of a domain near to his dwelling-house, and some vaguely determined rights over the communal land or waste. The free men of the tribe were all proprietors on the same title as himself, and were completely independent of any authority in him. Often, however, we find the territory of the clan taking the name of the chief's family; thus, there is frequent mention of the district of the O'Briens or Macleods. Next we see the authority of the chief increasing; the free cultivators, his equals, seek his protection, and become his liege-men; a certain de-

[1] See *Ancient Laws of Ireland;* and the excellent analysis of Sir Henry Maine in his *Lectures on the Early History of Institutions.*

pendence is established, similar to that which is created elsewhere by the *commendatio;* and in this dependence there are various degrees. The chief increases the number of his followers, in proportion as he grows rich. Thus the power at his disposal grows with his riches, and he employs his power, in turn, to increase his demands, and consequently his revenues. He takes advantage of the rights he has acquired over the waste lands of the tribe to establish a new class of tenants in them, who are entirely dependent upon him, and whose origin we shall see presently. Finally, he extends his suzerainty by a means which deserves all our attention, and has not hitherto been described.

As we have seen, the sources attributed to feudal institutions are two, the *beneficium* and the *commendatio.* When the proprietor granted land, reserving certain payments and services, to a tenant, who thus became his vassal, a *beneficium* was constituted. When, on the other hand, an impoverished proprietor, threatened or continually harassed, surrendered his land to some powerful man capable of protecting him, reserving, however, for himself the hereditary enjoyment of the property for certain rents and services, there was a *commendatio.* M. Fustel de Coulange has explained all these facts[1], with the clearness and profound knowledge of ancient texts, that render his treatises so instructive. Sir H. Maine has discovered in the ancient Irish legislation a third source of the feudal relation of lord and vassal, which dates back to a state of civilization long anterior to that in which the other two were produced. In fact, the *beneficium* and *commendatio* are based on the granting of land, and consequently assume private property as already very definitely established, whereas the feudal bond existing among the ancient Irish Celts sprung from the grant of cattle at a time when the soil had, one may say, no value. The fact pointed out by Sir H. Maine seems of great importance; but, in order to understand it, we must take into account the economic condition of primitive ages. Institutions, custom and law, all regulate material interests or are connected with them; we can therefore only arrive at a true understanding of them,

[1] See *Revue des Deux Mondes*, 15 May, 1873, and also Stubbs' *Constitutional History*.

when we know the economic conditions of the social state in which this law and these customs meet.

When the population is very thin, the soil has little value, because there is a portion for all. Even now, in some highly civilized countries, such as the United States or Canada, excellent registered lands can be obtained, with a good and complete title, for a dollar an acre, or about 12 francs the *hectare.* In primitive times, therefore, the chief capital is of necessity cattle. Tribes of hunters live entirely on the beasts they kill. Pastoral tribes derive their sustenance from the produce of the herds which they feed, and continue to do so even when agriculture has been introduced. Thus the Germans, Cæsar tells us, lived chiefly on flesh and milk. As Sir H. Maine observes, the word *capitale,* that is head (*caput*) of cattle, has given birth to two of the words most frequently employed in political economy and law, *capital* and *catel*[1], *cheptel,* or *chattels.* To shew the importance of cattle in primitive times, Adam Smith reminds us of the Tartars, who continually asked Plano Carpino, the ambassador to a son of Gengis-Khan, whether there were many sheep and oxen in France, these constituting every sort of wealth in their eyes. Formerly, cattle served as money, as etymology, poetic tradition, and the observation of historians alike shew. The words *peculium, pecunia,* come from *pecus.* At the commencement of agriculture, the value of oxen, so far from diminishing, was increased, for it was their labour that won the corn, the precious food newly acquired. At this point, the ox becomes a sacred animal, inspiring a sort of religious respect[2]. In India, the ancient Sanscrit literature shews that its flesh served at one time as an article of food. It is only later, at what

[1] The right of the best "*catel*" was the right in virtue of which the lords, after the death of a vassal, chose the best moveable belonging to the deceased. It was originally the right to the best head (*caput*) of cattle. *Catel* was also an old form of *cheptel.* The word "*cheptel*" signifies alike the agreement of the lord with the tenant, to whom he gives cattle for his support, reserving a share of the profits, and the beasts themselves that form the subject of the contract. In England, the right to the *heriot* or best chattel, in copyhold tenure, gives the lord the power of taking the best beast; and this has been regarded as a proof of the lord's right of ownership over the flocks with which he had furnished his vassals.

[2] M. Schweinfurth, in his *Travels in Central Africa,* says that the usefulness of the ox prevents certain tribes from killing it. We can here seize the transition between the moment when the life of the ox is respected in consequence of his great utility, and that when he becomes a sacred object, and the eating of his flesh is forbidden.

period we know not, when they wished to preserve the ox for purposes of cultivation, that this was forbidden. In Egypt, the cow Apis was an object of adoration. At Rome, the ox, like the slave and the soil, was raised to the dignity of a *res mancipi*, the most solemn form of property applicable only to the soil, and that which is used for its cultivation. Those things, whose alienation demanded the public formalities of *mancipatio*, corresponded to the sacred soil of India, and the sacred ox of Siva. Among the Irish Celts, as among the Germans, tribute, penalties and compositions for crimes were originally paid in cattle.

In the ancient Irish laws, we constantly see the chiefs making grants of cattle "*en cheptel*" to men of their tribe, and various forms of vassalage spring therefrom. Two documents of the Senchus Mor, the *Cain-Saerrath* and the *Cain-Aigillne*, are devoted to this subject. Sir H. Maine gives the following explanation of the origin of this custom. As we have seen, the chief of the clan, besides his private property, enjoyed a domain attached to his office, together with certain rights over the unoccupied lands of the commune. He could, therefore, feed more cattle than the others. Moreover, in his capacity as military chief, he obtained a larger share in the spoil, which chiefly consisted of herds, the only capital they could take from the vanquished. Thus the chief often had more cattle than he required, while the rest were in want of them; and to attach his companions to himself he granted them beasts under certain conditions. In this way, the free man became the vassal—*ceile* or *kyle*—of the chief, to whom he owed homage, service, and payments. We thus see the same relations produced here, as those which result from the *commendatio* and the *beneficium*, that is, from what was the basis of the feudal system.

This curious custom may evidently be traced to the commencement of civilization, where the soil, from its abundance, is of no value, and cattle is the one form of wealth. Sir H. Maine seems to be right in supposing that the *beneficium* and *commendatio*, which transformed the social organization after the fall of the Roman empire, must have had their roots in certain rudimentary usages of Aryan nations, and particularly in the one we are considering. In the author's opinion, the very etymology of the word *feudal* supports this view: it shews

that, among the Germans, the origin of the relation of vassalage, subsequently called feudal, was the same as among the Celts of Ireland. The English word *fee*, which signifies *remuneration* or *honorarium*, is obviously the same as the Dutch *vee* and German *vieh*, signifying cattle. If the same word means both *remuneration* and *cattle*, it is manifestly because cattle were formerly given for services rendered. When, subsequently, land was given instead of cattle, this land was a *feod* (*od*, property, and *fe*, remuneration) as opposed to the *allod* (*od*, property, and *all*, complete), a personal domain entirely independent, and not held of any one. The chief granted his vassal cattle, and afterwards land, to secure his services, just as in Sweden, at the present time, the temporary enjoyment of land is granted to the soldiers of the *in-delta*, instead of pay in money. The benefices, or lands, granted by the kings to their faithful followers, were *feods* or *fiefs*. The feudal system evidently dates from the time when cattle were alike the one form of reward and the one form of riches. This form of vassalage, which formerly existed among the Irish Celts, seems so natural in a certain state of society, that it is found identically the same among the most widely different nations. Thus we find in the Rev. H. Dugmore's curious book, on the *Laws and Usages of the Caffres*, the following passage: "As cattle constitutes the sole wealth of the Caffres, it is the medium in all transactions of exchange, payment, or remuneration of services. The followers of a chief serve him in consideration of a certain number of beasts, and he could not preserve his influence nor retain a single adherent, if he were not plentifully provided with what is at once their money, their food, and their clothing." These few lines are a faithful sketch of the primitive social condition of Ireland and Germany.

At the time of the Brehon Laws, when a member of the tribe received cattle from the chief, he became his liege-man, his vassal. The more cattle he accepted, the greater was his dependence, for the gift was evidence of his former destitution. Hence arose the difference between the two classes of tenants, the *saer tenants* and *daer tenants*, which correspond pretty closely with the two categories of inhabitants of an English manor, the *free* and *base* tenants.

The *saer stock tenant,* who had only received a small grant of cattle, remained free and retained all his rights in the tribe. After seven years, the common term of this vassalage, he became owner of the cattle which had been entrusted to him. During this period he might use the beasts for agriculture; the chief having the right to their milk and increase. It was therefore an actual lease of cattle for a term. The *saer* tenant also owed the chief homage and certain services. Thus he was bound to help get in the lord's harvest, to build or repair his fortified house, or to follow him to the wars.

The *daer stock tenant,* having received a larger lease of cattle, was under heavier obligations. He seems, in some measure, to have lost his liberty, and the texts depict him as heavily burdened. The "*cheptel,*" which his chief granted him, consisted of two parts: the first was proportioned to the fine or composition which had to be paid by any one injuring him, and varied according to the rank and dignity of the person injured; the second part was regulated by the rent in kind, which the tenant was bound to pay. These rents are minutely determined in the Brehon Laws. To entitle the chief to a calf, to three days' "*refection*" during the summer, and to three days' labour, he must grant the tenant three heifers; while a grant of twelve heifers or six cows to the tenant, entitles the chief to a heifer. The right of "*refection*" allowed the chief to take up his abode and live in the house of the tenant with certain of his followers, for a given number of days. This practice shews that the lords were hardly better lodged and fed than their vassals. It was a mode of consuming the rent in kind to which they were entitled. The custom is found wherever the feudal system existed (under the name of "*droit de gîte et d'alberge*" in France); but, in Ireland, it gave way to abuses, which quite overwhelmed the poor tenants. Old English writers, who have treated of Ireland, such as Spenser and Davis, inveigh against the extortions of which they were victims. In theory, the tenant after seven years became owner of the cattle, and the greater part of his obligations ceased; but, in proportion as the chief became more powerful, the dependence of his tenants increased and became permanent.

This custom of *cheptel* aided in breaking the bonds which

united the members of the same tribe, to substitute feudal vassalage in their place. The free man accepted cattle, even from a chief belonging to another tribe, and so became his vassal. A peasant who had grown rich, a *bo-aire*, also granted cattle in *cheptel*. The *bo-aires*, in their turn, and even the chiefs, accepted cattle from lords richer than themselves, and there were thus constituted new groups, consisting of lord and vassals, distinct from the primitive group, composed of the chief and his clan. Moreover the acceptance of cattle had the same effects as the *commendatio* elsewhere, and so the feudal system was established in Ireland in consequence of a natural, indigenous evolution, based on the system of *cheptel*. This is so true that in the Brehon Laws, the notion of feudal dependence is translated by this expression: "he has received cattle in *cheptel*." They represent the king of Erin having received cattle from the Emperor in this way.

We will now see how the chief of the clan, to increase his power, took advantage of the vaguely defined rights which he was recognized as having over the waste lands of the tribe. We see, in the Brehon Laws, that there were at this time in Ireland a very numerous class of men, who, having for one reason or another broken the bonds attaching them to their clan, found themselves classless, wanderers, and fugitives, with no fixed place in a society entirely divided into closed corporations or family communities. These men were called *fuidhirs*. Cæsar also notices the existence of a considerable number of miserable, ruined men in Gaul, who surrendered themselves to a master to obtain his protection[1]. In Germanic countries, particularly Switzerland, where the commune gives no rights to the mere inhabitants, we also find *Heimatlosen*, or people without a country. The same class exists in Russia. As the community is responsible for the crimes and violence of its members, it is to its advantage to expel all those who are guilty of such offences. The *Book of Aicill*, one of the *Brehon Tracts*, even shews the steps taken to effect this expulsion. These outlaws found themselves destitute of resources, for they had no longer any land to cultivate, and agriculture was almost the only regular means of existence. It was to the interest of the chief of

[1] *De Bello Gallico*, III. 17; VI. 11, 13, 19, 34; VII. 4.

another clan to grant them land on the communal domain, for certain payments. By this means he increased alike his revenues and his influence. The *fuidhirs*, having no rights of their own, were entirely dependent upon him. During the centuries of trouble and disorder which Ireland passed through in the middle ages, the number of *fuidhirs* would naturally increase continually. They gradually encroached upon the land belonging to the freemen of the tribe, that was yet undisposed of; and the latter were consequently impoverished because they could no longer keep so much cattle. Thus, the chief, on the one hand, became more powerful, while his old equals, on the other hand, were relatively descending in the social scale. The inequality continually became more and more marked: the feudal lord rose above the class of cultivators, and they fell into entire dependence upon him. As the lord constantly had arms in his hands, either for war, for the chase, or for martial exercises, while the peasants abandoned the use of them, he acquired over the peasants the irresistible authority given by force; and so he became their lord, and they his vassals.

There were two classes of *fuidhirs*, the *saer* and *daer fuidhirs*. The one cultivated the waste lands granted them by the lord, and paid him a rent in kind determined by his pleasure; they also seem to have lived in organized family communities, of the type generally in force. The others were in a state of domestic slavery or serfdom; they did all the work of the manor, cultivated the lord's domain, and guarded his herds. English writers of the sixteenth and seventeenth centuries, such as Edmund Spenser and Sir John Davis, depict the miserable condition of the tenants oppressed by the landlords in colours that exactly recall the position and grievances of the small tenants-at-will in Ireland at the present day. Sir H. Maine is of opinion that we must look back to the *fuidhirs* for the origin of the deplorable relations between landlord and tenant, which Mr Gladstone endeavoured to remedy by special legislation.

We see how inequality was introduced almost everywhere. Yet, just as in certain isolated districts, community of arable land with periodic partition has been maintained to our own times, so in other districts the free organization of the *mark* has

managed to escape the influence of feudalism. Such was the case, for instance, in the Dutch provinces of Frisia and Drenthe, in the country of Ditmarschen, in the district of Delbrück, and the forest cantons of Switzerland, that is to say, in regions where the pastoral system was maintained, which required no hands for the cultivation of the soil, and therefore did not necessitate the introduction of the *corvée*, as in the agricultural districts. The Ditmarschen district, in Holstein, was peopled by groups of families from Frisia and Saxony. They formed four "marches," each governed by twelve councillors elected by the inhabitants. These four marches were united by a federal bond. The affairs of the federation were managed by a council composed of forty-eight "councillors of the marches." Charlemagne formed the country into a *gau* or district, called *communitas terræ thetmarsiæ:* it was nominally subject to the authority of the bishop of Bremen, but the bailiff of the bishop exercised no actual power. The forty-eight councillors governed the country, which formed an independent republic. "The people of Ditmarsch," says a chronicle of the fourteenth century, "live without lord and without chief, and act as they like.[1]" Niebuhr, who belonged to this country, was fond of mentioning these ancient liberties. Between Drenthe and Ems, the country of Westerwold had also preserved complete independence. It had its seal, a sign of its autonomy: it nominated its councillors and its judge. It was only in 1316 that it began to recognize the suzerainty of the bishop of Munster, by rendering him every year a smoked fowl from each household.

The forest cantons of Switzerland afford an example even more curious, because they have preserved to the present day the primitive organization of the *mark*. The whole Schwitz valley formed one district, in which different village communities had from time to time established themselves. Each inhabitant owned his house and the adjacent plot as private property:

1 "De Ditmarschen leven sunder heren und hovedt, unde doen wadt se willen." In France, likewise, especially in Dauphiné and Franche-Comté, there existed peasant communities which had preserved their allodial franchise and their entire independence. M. Bonnemère quotes a curious example in his *Histoire des Paysans*. The inhabitants of a small district of Artois, called Alleu, in 1706 refused to pay the contribution laid upon them, and wished to present themselves at Versailles to shew Louis XIV. the titles of their franchise and immunity.

the rest of the territory was collective property. The Hapsburgs were suzerains of the country, but they treated the inhabitants "as freemen." When the population increased, the country was divided into four districts, each of which elected its *Amman*, governed itself independently, and had judicial power. But the whole valley still formed a community possessing all their lands in common (*Allmenden*), and having its general assembly (*Landesgemeinde*). This assembly superintended the use of the forest and common pasture, determined how many head of cattle each man might send to it, and framed all necessary regulations. No one could sell his house or his land to a stranger. Uri and Unterwalden were also independent districts. At first the Empire, and subsequently the Counts of Hapsburg, exercised, it is true, a right of suzerainty over these small independent societies; but, when they wanted to extend this right and convert it into an effective sovereignty, the cantons revolted and gained their complete independence. They thus escaped the tyranny of feudalism as well as the power of royalty, and succeeded in preserving to our times the primitive liberties of the *mark*.

To form an idea of the social organization of these rural democracies, which originally existed throughout Europe and among all races, we have but to transport ourselves to one of the forest cantons of Switzerland or the Andorre-valley, where we can see, in the midst of the Pyrenees, institutions precisely similar to those of Ditmarsch or Delbrück. Time has respected the ancient organization: the property of the arable land has ceased to be collective; that of the pasturage and forest has remained so. Elsewhere, as in Russia, though the agrarian community has been maintained, liberty has perished, because the sovereigns have created on all sides a privileged aristocracy. In England, on the contrary, landed property has accumulated in a few hands, and the rustic labourer has been deprived of it; but the direct government in the vestry and the township, and the free institutions, have been maintained.

Servia is perhaps the country in Europe, which has best preserved the features of primitive societies, because the Turkish dominion has been sufficiently heavy to hinder the birth of an aristocracy, without being so severe and mischievous as to

annihilate local independence. If the development of European nations had proceeded normally, it would have been similar to that of the Swiss cantons. Direct government and local autonomy would have been maintained in small, independent rural democracies; and these would have been united by a federal bond, so as to constitute, on the basis of identity of language and ethnographic origin, organized nations, such as the United States in the present day. Feudalism, a privileged aristocracy, monarchic despotism, and the administrative centralization inaugurated in the fifteenth and sixteenth century, have all been disturbing elements. At present, the organization, to which the tendencies and aspirations of European societies are directed, is manifestly that of the American township and the Swiss canton, which is no other than that of Ditmarsch or the valley of Andorre;—that is to say, that which free populations spontaneously establish at the commencement of civilization, and which may thus be called natural. A federation of autonomic and land-owning communes should compose the state; and the federation of states ought eventually to form the organization of universal human society.

CHAPTER XVIII.

HISTORY OF LANDED PROPERTY IN ENGLAND AND CHINA.

THE history of property in England is an exact repetition of the history of property at Rome. In both cases small holdings were invaded by the *latifundia*. In England, the progress of inequality and the feudalization of the soil were effected in the most regular and complete method. There can be no doubt that originally Great Britain was occupied by agrarian communities similar to those of Germany. Cæsar tells us that the Britons lived on flesh and milk: so that the pastoral system must have prevailed, as well as common pasturage, which is the ordinary condition of it. As we have already seen, numerous traces of the ancient community still subsist; but by the Anglo-Saxon period, which is the earliest point to which ancient charters allow us to go back, the social organization was already much modified. Inequality and class distinction were introduced. The manor was constituted, and took the place of the old association of equal, independent cultivators. At an early period, a few illustrious families had more serfs, and more cattle, and obtained a larger share in the re-partition. The war-leaders, developed into hereditary kings, succeeded in gradually appropriating the right of disposing of waste lands as grants. The common land of the different clans (*ager publicus*) or *folcland*, was regarded as royal domain, *cyninges folcland*, and the king disposed of it, either alone, or with the consent of the national assembly or *witan*[1]. Thus registered private property, or *bocland*, was developed. In the tenth century—even before the

[1] Document of the year 858. Kemble, *Cod. Dipl.* 1, 104. *Ego rex cum consensu ac licentia meorum optimatum.*

Norman conquest—the *mark* had been already transformed into the manor, although the term was not yet in use. The country was covered with a great number of domains (*maneria*), of very different extent, from the *maneriolum* of one plough to the *latifundium* of fifty ploughs. The lands dependent on the manor were in some cases still mixed up with those of the cultivators, or else lay side by side with them.

Although, since the Roman invasion, the soil was never common property subject to periodic repartition, private property was still submitted to many restrictions. Only the village, with the orchard and garden attached to each house, was enclosed. Hence the name of *town, zaun*, or "fence," given to the cluster of dwellings[1]. All the inhabitants had to assist in keeping up the fences[2] intended for the protection of the village and of the flax-gardens against domestic animals grazing at large. The German villages in Transylvania are to this day surrounded by a fence, and the entries closed by a barrier.

The cultivated portion of the communal territory was divided into three parts, successively devoted (1) to rye, (2) to oats, and (3) to lying fallow. In each of these portions, every proprietor had one or more lots, and all these lots were subject to the general compulsory rotation of crops, the *Flurzwang*. They had to be all sown in the same way, because they were given up to common pasture at the same time. These scattered lots originated in the old periodic partition, but they had by degrees become private property. The two portions occupied by rye and oats were temporarily surrounded by a wooden fence[3], which was thrown down on Lammas day. These barriers were

[1] The dwelling-house itself bore the name of *town*, from being surrounded by a hedge. *In cyninges tune,—on eorles tune* ("In the house of the king," or "of the earl").—Laws of Alfred, I. § 2 and § 13. The farmyard also bore the name "town." See the excellent work of E. Nasse, *Ueber die mittelalterliche Feldgemeinschaft in England.*

[2] The laws of king Ina rendered any one, who was careless in constructing his share of the fence, responsible for any damage caused by cattle. The old Jute law of the year 1240, III. c. 57, *Van thünen the makende* (of the construction of fences) explains in detail the obligations of the villagers as regards the keeping up of fences surrounding the houses or the village. See, as regards Germany, Von Maurer, *Geschichte der Frohnhöfe*, III. p. 195.

[3] In Domesday Book there is frequent mention of forests set aside to supply the necessary wood for these enclosures. *Silva,—nemus ad clausuram,—ad sepes,—ad sepes reficiendas,—rispalia ad sepes.*—See *General Introduction to Domesday Book*, by Sir H. Ellis, 1833, Vol. I. p. 100, quoted by Nasse.

thrown down by the assembled crowd, amidst songs and shouts of joy. This momentary return to the primitive community was one of the chief festivals in the country. The herds then took possession of the whole land of the village.

As the arable land produced no fodder for the cattle, a wide extent of pasture land was necessary to provide grass for the summer and hay for the winter; and this pasture land was occupied in common. Each family had a share in the portion laid for hay; and the cattle of the whole commune were pastured indiscriminately on the remainder. The laws of Edgar speak of common pasturage, as the ordinary property of every village or *tunship*. There is also frequent mention, in documents of the time, of the common forest[1].

Certain remote districts retain the ancient agricultural system, by which every portion of the territory was successively brought under cultivation, by a rotation of eighteen or twenty years, without any permanent distinction between arable and pasture land. This was the primitive rotation in Germany, and is still practised on the fertile steppes of Russia, as well as on the barren plateau of the Ardennes and the virgin forests of Brazil, wherever, in fact, there is sufficient space.

The agricultural systems just described lasted in England till the commencement of the present century, and many traces of them still exist. William Marshall, who described exhaustively the rural economy of England, writing between 1770 and 1820, speaks as follows on the subject:

"A very few centuries ago, nearly the whole of the lands of England lay in an open, and more or less in a commonable state. Each parish or township was considered as one common farm; though the tenantry were numerous......

"Round the village in which the tenants resided lay a few small inclosures, or grass yards, for rearing calves, and as baiting and nursery grounds for other farm stock. This was the common farmstead, or homestall, which was generally placed as near the centre of the more culturable lands of the parish or township as water and shelter would permit.

"Round the homestall lay a suit of arable fields, including the deepest and soundest of the lower grounds, situated out of water's way, for raising corn and pulse, as well as to produce fodder and litter for cattle and horses in the winter season.

[1] See Kemble, *Cod. Diplom.*, Nos. 179—190, 241, 205, 432, 843, 1142, 1281.

"And, in the lowest situation, as in the water-formed base of a rivered valley or in swampy dips, shooting up among the arable lands, lay an extent of meadow grounds or '*ings*,' to afford a supply of hay for cows and working stock in the winter and spring months.

"On the outskirts of the arable lands, where the soil is adapted to the pasturage of cattle, or on the springy slope of hills, less adapted to cultivation, or in the fenny bases of valleys, which were too wet, or gravelly water-formed lands, which were too dry, to produce an annual supply of hay with sufficient certainty, one or more stinted pastures, or hams, were laid out for milking cows, working cattle, or other stock which required superior pasturage in summer.

"While the bleakest, worst-soiled, and most distant lands of the township were left in their native wild state for timber and fuel, and for a common pasture, or suit of pastures, for the more ordinary stock of the township, whether horses, rearing cattle, sheep, or swine, without any other stint or restriction than what the arable and meadow lands indirectly gave; every joint-tenant, or occupier of the township, having the nominal privilege of keeping as much live stock on these common pastures in summer as the appropriated lands he occupied would maintain in winter.

"The appropriated lands of each township were laid out with equal good sense and propriety. That each occupier might have his proportionate share of lands of different qualities, and lying in different situations, the arable lands more particularly were divided into numerous parcels, of sizes, doubtless, according to the size of the given township and the number and ranks of the occupiers.

"And, that the whole might be subjected to the same plan of management, and be conducted as one common farm, the arable lands were moreover divided into compartments, or 'fields,' of nearly equal size, and generally three in number, to receive in constant rotation the triennial succession of fallow, wheat (or rye) and spring crops (as barley, oats, beans and peas)."

Sir Henry Maine expresses his surprise at the number of traces, that he has met with, of the former existence of collective ownership and joint cultivation[1].

In many counties turf-grown ridges, or *baulkes*, are still to be traced, which formerly separated the three fields of the triennial rotation. These *baulkes* were so long, that in some villages they measured as much as eighty acres, although not ten feet in breadth. In several counties, a large portion of the land is not enclosed, but is divided into open, intermixed fields.

According to Marshall, "in Huntingdonshire, out of a total area of 240,000 acres, 130,000 were commonable." The agra-

[1] *Village Communities* (1876), p. 88.

rian organization in England and Germany are, therefore, precisely similar. In the Anglo-Saxon period, although the lords had already more extensive lands together with certain privileges, the condition of the cultivators was easy, and very general equality prevailed among them. The Anglo-Saxon *hide*, the ordinary portion of each family, with its *virgata terræ*, contained from sixteen to fifty acres, according to the fertility of the soil. It was sufficient to produce the corn necessary for the support of the family. The wide extent of the common pasturage enabled them to keep large herds, and there was plentiful supply of wood. The first wants of life were therefore abundantly supplied for every one.

The result of the Norman conquest was to increase the power and wealth of the higher classes, and to lower the condition of the mere free man. The Saxon kings had already, from time to time, disposed of waste land and so reduced the domain of the communes; but the Norman sovereigns, regarding themselves as proprietors of the whole soil, by right of conquest, made much more frequent grants, and the greater part of the *folcland* was converted into *terra regis* or royal domain. This usurpation was especially directed against the forests.

Another circumstance contributed to the growing dependence of the cultivators. In Greece and Rome, as well as in India and Germany, we find the *precarium*, that is, land granted for a term of considerable length—for life, or for several lives—a rent in kind being reserved. The oldest Anglo-Saxon documents mention the *Lænland*, land granted to peasants, who were bound to render cattle, corn, poultry or eggs, or else to execute certain agricultural operations on the manorial lands. These cultivators, it seems, were attached to the soil; or, at least, the domain was sold "*mid mele end mid mannum.*" Their condition, therefore, resembled the Russian serfs[1]. After the Norman conquest, the lords of the manor made use of the predominance given them by the habit of bearing arms, to reduce

[1] This is precisely the condition of the German serf as described by Tacitus: "*Ceteris servis, non in nostrum morem, descriptis per familiam ministeriis, utuntur: suam quisque sedem, suos penates regit. Frumenti modum dominus, aut pecoris aut vestis, ut colono injungit, et servus hactenus paret: cetera domus officia uxor ac liberi exsequuntur.*"

the free cultivators more and more into the condition of vassals. The economic constitution of the manor was as follows. The dwelling of the lord, *curia manerii, aula dominii*, was more or less extensive and well built, according to the wealth of its owner. The territory dependent on it was divided into two parts; one being granted to the vassals, *terra hominum, tenentium;* the other being farmed directly by the lord, *terra dominica*, or demesne lands. The *terra dominica* was cultivated by the *corvée* of the vassals, who had to provide the oxen for ploughing, and to sow, reap, mow, and gather in the harvest.

Among the cultivators there were distinct classes. In some manors, the lord had granted the cultivation of a portion of the *terra dominica* to tenants, who were called *tenentes de dominico.* Their tenure was only a temporary one. There were first the *villani*, whose condition resembled that of the Russian serf; they had a portion of the soil, sufficient for their subsistence, but they had to cultivate the lord's land, to make his hay, and reap and gather in his harvest. Next there were the free tenants, *liberè tenentes* or *tenentes in libero socagio*, and the *liberi socmanni*, who merely owed the lord smaller payments in kind or labour. The rent to be paid by them was often nominal, consisting of a fowl, a pair of gloves, or a flower. Their holding was also the old plot, sufficient to support a family, the *hide* or *virgata terræ*, of which the extent varied from sixteen to fifty acres. Those, who held only half this, were called *socmanni dimidii*, or *dimidii libèri homines.* These were the old free men. Finally, those who had still less land, or had nothing but their dwelling house, were designated *cotarii*, or *cotmanni*, because they inhabited a cot or cottage. The lòrd granted out the right of cultivating the waste lands, which formerly belonged to the village, reserving certain rents, at first in kind, then frequently from the thirteenth century in money. Tenants holding these lands are called in old documents *isti qui tenent de novis essartis.* The enjoyment of the forest and pasture land remained collective and undivided between the inhabitants of the village and the lord; but the latter had already usurped the eminent domain, which he was later to convert into full ownership. The meadow lands were generally divided every year among the inhabitants. The arable land had become private property; but

all the customs of the old agrarian community were maintained. Every one had plots in the different fields of the rotation. These fields—and not the several plots—were surrounded by an enclosure, at which all were bound to work. The peasants combined their forces, and cultivated their lands, as well as those of the lord, according to a cooperative system imposed on them by the requirements of agricultural labour. To till the soil, they harnessed eight oxen, or four horses and four oxen, to the plough. If the peasants had not enough beasts, two or three of them united together to form a team.

The population being very thin, the portion of cultivated land was far smaller than the uncultivated. Collective enjoyment, therefore, extended over the greater part of the territory: and even the arable land, as soon as the harvest was gathered in and the enclosures thrown down, became common pasture again for all the cattle of the village, tended by a single herdsman. As Nasse remarks[1] with great justice and penetration, the inequality resulting from the constitution of the seignorial manor must not be confounded with that which followed from the introduction of feudalism. The relations of the lord of the manor with his tenants, whether *villani, socmanni* or *cotarii,* were purely economic. The payments which the tenants owed to the manor were really a payment of rent for the land, over which the lord claimed a right of ownership or eminent domain. This subordination of the tenants to the proprietor, or of serfs to the lord was established, with the aid of the kings, in the same way as in Germany, and more recently in Russia, without any conquest subjecting vanquished to vanquishers.

The relations of the feudal hierarchy were likewise based on grants of land; because, in the absence of taxation, a grant of enjoying a portion of land was the only possible method of rewarding a service, or duty. Nevertheless, the feudal hierarchy was preeminently political. It constituted the state organization; for the benefice was originally granted for life to the count or marquis, who governed a town or district; to the man of arms who owed military service; or to the vassal who was bound to appear and aid his sovereign in judging or administer-

[1] See M. Nasse's instructive article in the *Contemporary Review*, May, 1872, *Village Communities.*

ing. It was only in later times that the benefice became hereditary; while military service, originally imposed on every free man, became the condition of enjoying a fief. The feudal system, being at its full development at the time of the conquest of England by the Normans, was applied there in a more complete and systematic manner than anywhere else. It was admitted in theory that the sovereign was now proprietor of the whole soil, and henceforth all land was considered as granted by the sovereign. For this reason Blackstone, and other jurists, admit even now that English soil is the property of the Crown. The Anglo-Saxon lords, remaining in possession of their domains, became the conqueror's vassals, like those of his companions, to whom he had actually granted confiscated property. There was no longer any free allod; all lands were comprised in the network of feudal tenures. This was not the case in Germany, and still less so in Holland and Scandinavia. There, side by side with the seignor and the feudal manor, village communities at first, and peasant proprietors subsequently, maintained their independence for centuries, and, in some provinces, even to the present day.

The complete feudalization of property in England had two results, which at first sight seem contradictory. On the one hand, it led to the preservation or re-establishment of political liberty, because, royalty being from the first very powerful, the nobles allied themselves with the bourgeois to limit its power and to found the parliamentary system on the traditional type of the *witan*, the Germanic *thing* or *mallus*. On the other hand, it was singularly favourable to the development of inequality and the extension of *latifundia*, because a share in the judicial and legislative power was given to the lords, while elsewhere such power was exercised by the kings, for the advantage of their prerogative and at times in favour of the middle classes, whose support was sought by the Crown. Mr Cliffe Leslie[1], M. Nasse, and Mr David Syme[2] have described in detail this remarkable economic evolution, the final result of which has been to concentrate the possession of the soil of England in the hands of a few thousand families.

[1] *Land Systems in Ireland, England and Continental Countries.* London, 1871.
[2] *Landlordism*, by David Syme. London, Trübner, 1871.

To sum up rapidly the phases of the continued progress of inequality. After the conquest, the *corvée* became more and more severe. The tenant, who occupied a *virgàta*, owed the manor three or four days' labour a week, from the first of August to Michaelmas; and two or three days during the rest of the year. He was bound besides to plough the land one day a week, as well as to sow and harrow it when ploughed. He also owed extraordinary services, to gather in the hay and harvest, to cart wood, or dig ditches. The lord's domain did not form a compact whole. It was composed, like the cultivator's *virgata*, of a large number of scattered parcels in the three fields of the rotation, these being also the lots of the old partition. In many localities, the lord endeavoured to break in on the indivisibility of the arable, and, by means of forced exchanges, formed for himself a separate domain which he enclosed.

The fief having been granted by the sovereign to the lord, the latter assumed, as a consequence, that the whole soil belonged to him. He did not, on this account, suppose himself able to despoil the peasants of the enjoyment of their lands or of their right of using the common forest and pasturage, but these rights were regarded as servitudes exercised over the property of the lord. In consequence of this usurpation, the lord began to enclose, for his own use, all that portion of the communal pasturage, which was not required for the wants of the tenants. The Statute of Merton in 1235, and the Statute of Westminster in 1285, decided that the complaints of the tenants, *liberè tenentes*, against the usurpations of the lord of the manor were not to be allowed, when it was shewn that *ipsi feoffati habeant sufficientem pasturam quantum pertinet ad tenementa sua.* As to the rights of the *villani*, there is nothing to shew that the law protected or even recognised them. The lords made large use of the privilege granted them by the Statute of Merton, to extend their private domain.

There was also another custom, calculated to enrich them further. This was the *jus faldæ*, in virtue of which the tenants were obliged to fold their sheep on the lord's land, so as to manure it abundantly. Under the primitive triennial rotation, manure from the stable was rare, as the beasts were nearly always out at grass. The result, therefore, of the *jus faldæ* was

to impart to the lord's land the elements of fertility which it took from the tenants' lands. The same custom enriched the one and impoverished the other.

From the thirteenth century, there commenced in the agrarian situation of England a slow and gradual revolution, which at first seemed favourable to the cultivators, and yet ultimately produced a remarkable reduction in their number. It gave them liberty, and, at the same time, took away their property.

In England, which, in consequence of its geographical position, is essentially a commercial country, the use of money became common earlier than elsewhere. Thus, in the thirteenth century, we find in the registers of property belonging to churches and monasteries, that payments in labour were commuted for money rents. So the lease gradually replaced the *corvée;* and, at the same time, the lord had agricultural labour carried out on his demesne land by hired labourers.

After the great plague, which carried off considerable numbers of men, wages rose to such a point, that a special law, the *Statute of Labourers*, was passed, fixing the wages at two pence per day in winter, and three pence in summer; and compelling the labourer to work at this rate under pain of imprisonment. The lord of the manor, having to pay these high wages, did not find it so profitable to cultivate his land himself as to let it. This is why we find, that in the sixteenth century servile tenancies had almost entirely disappeared.

The position of the cultivators, in a juridical point of view, was at the same time improved. The *villani*, instead of being liable to the *corvée* at the lord's caprice, became what the law of the time styles "tenants by copy of the court roll," and, in later times, "copyholders." As the courts of justice decided, in the time of Edward IV., that copyholders could not be evicted, so long as they fulfilled the obligations prescribed by custom, such tenants acquired a permanent possession, and came to take a place by the side of the *socmen* and *yeomen* already enfranchised. The fixed money rent, which they had to pay, soon became less burdensome in consequence of the depreciation of the coinage.

Thus, towards the end of the middle ages, when serfage

elsewhere was becoming more burdensome, there was formed, in England, a numerous class of proprietor cultivators, living in comfort, and independence, and comprising an infinite series of degrees, from the squire, who was scarcely distinguishable from the noble, to the cottier, or rustic labourer, who likewise had his house and field. It was this yeomanry, which made the power of England, and conquered the French Chivalry in the wars of a century. Hallam says, it is the proud independence of this noble stock of free socage tenants that has given so marked a stamp to the national character, and established so much freedom in our constitution. A chronicler, whose evidence Mr Cliffe Leslie adduces, uses the following terms to describe the position of yeomen possessing property at a rental of £6 sterling in the money of the period. "These commonly live wealthily, keep good houses, and travail to get riches. They are also for the most part farmers to gentlemen, or at the least artificers, and do come to great wealth, insomuch that many of them are able and do buy the lands of unthrifty gentlemen, and often setting of their sons to the schools, to the universities and to the inns of court, or otherwise leaving them sufficient lands whereby they may live without labour, do make them by those means to become gentlemen. These were they that in times past made all France afraid."

Thus, in Saxon times, the island was peopled by free men, proprietors and warriors, regulating their own interests and administering justice. After the Norman conquest, feudalism reduced the greater number to slavery or to a state of great dependence; but gradually they get their payments in labour or kind rigidly defined; commute them for pecuniary rents, not subject to increase, and so regain a sort of property.

To-day, strange as it appears, there hardly remain any of these independent proprietors,—of the yeomen who fought so valiantly for the greatness of their country abroad, and for her liberties at home. At the end of the seventeenth century, though much reduced in number, there were still 160,000, forming with their families one-seventh of the population. A few were said to exist a short time back in the lake district; and Mr Fawcett, in his book *On the British Labourer*, tells us he knows of localities where, a century ago, they existed

by hundreds. At the present day, the noble and powerful class of yeomen seems extinct: large property has absorbed its last representatives. It is a repetition of the history of Roman *latifundia.* In Longfellow's poem, Hiawatha, embarked on his vessel, disappears in the rays of the setting sun, and passes away to the regions whence there is no return;—it is a picture of the red man becoming extinct at the approach of the white. But the yeomen were of pure Anglo-Saxon blood. They were owners of the soil; possessed of competence; they had survived the conquest, and been emancipated from the yoke of feudalism. Why did they disappear at the very time when the power and wealth of England were increasing? And how comes it that the rural *bourgeoisie,* which everywhere else increased in numbers and influence, ceases to exist in the one country where modern liberty and civilization were first established?

Several causes have been favourable to this great revolution which passed unnoticed; although its result, as Mr Morier remarks, has been to make England the only civilized nation, where property in land has been entirely taken from the hands of those who cultivate it. Mr Cliffe Leslie enumerates the more important of these causes with great precision. According to him they are these:

(1) Confiscation of their ancient rights of common, which were not only in themselves of great value, but most important for the help they gave towards the maintenance of their separate lands.

(2) Confiscation to a large extent of their separate lands themselves, by a long course of violence, fraud, and chicane, in addition to forfeitures resulting from deprivation of their rights of common.

(3) The destruction of country towns and villages, and the loss, in consequence, of local markets for the produce of peasant farms and gardens.

(4) The construction of a legal system based on the principle of inalienability from the feudal line, in the interest of great landed families, and incompatible with either the continuance of the ancient, or the rise of a new class of peasant landholders.

(5) The loss, with their territorial lands and rights, of all political power and independence on the part of the peasantry; and, by consequence, the establishment and maintenance by the great proprietors of laws most adverse to their interests.

(6) Lastly, the administration by the great landowners of their own estates in such a manner as to impoverish the peasantry still further, and to sever their last remaining connection with the soil.

Several of these causes began to produce their effect in the middle ages. When the *corvée* was transformed into a rent paid in money, the lord of the manor began the war against small property. From the moment that he had no claim on their service, but only to so much an acre, it ceased to be to his advantage to have many vassals. It was, on the contrary, more convenient for him to deal with a single large lessee, than with several small tenants; and it was to his profit to reduce the number of persons entitled to exercise a right over the pasture land and the forest of the domain. He, therefore, strove by any means to unite several holdings into one large farm. As early as the fourteenth century, the archives of the Church of St Paul mention several examples of this grouping of several holdings into one[1]. Harrison, in his *Description of England* at the beginning of the *Holinshed Chronicles*, shews how "our great encroachers" transformed numberless small holdings into vast sheep walks.

The considerable rise in the price of wool, in the fifteenth century, determined the lords of the manor to let nothing prevent their extending the grass lands at the expense of the arable. They had recourse to clearances, such as have been carried out more recently in Ireland. They attained their object in this way. The demesne land, as we have seen, consisted of numerous parcels intermixed with those of the tenants, and subject, like theirs, to the compulsory rotation. When they effected a new partition, so as to transform their domain into a large farm under a single tenant, they united to it a portion of the tenants' lands, and so disorganized the whole of the old agrarian constitution. By appropriating vast extents

[1] See Nasse, *Ueber die mittelalterliche Feldgemeinschaft.*

of the common land, they ruined, or at least made more difficult, cultivation by small proprietors, who were impoverished by having less wood, and less pasture for their cattle. If a famine, or a bad harvest occurred, there was nothing for them to do but surrender their property to the lord, who united it to his own domain. The numerous prosecutions, instituted against those who had thrown down enclosures, shew to what an extent the peasants suffered. In the end of the fifteenth, and throughout the sixteenth century, the destruction of small holdings and the conversion of arable into grass lands aroused the most violent opposition. A law of Henry VII., in 1488, prohibits the destruction of farm buildings which are let with twenty acres of land. "Many houses and villages," says the preamble of this law, "are now deserted. The arable land which belonged to them has been enclosed, and turned into grass land; and idleness is becoming general. Where two hundred people were living but lately by their labour, two or three shepherds are now to be seen." Bacon commends this law because its object was "to keep the plough in the hands of the owners and not hirelings." Four similar laws were passed under Henry VIII., which is evidence how powerless they were. One orders the re-building of the houses that had been demolished, and the return to the plough of the lands which had been taken from it. Another commands the building of houses for every cultivated area from thirty to fifty acres in extent. The law of 1634 is intended to stop the overrunning of sheep. "A few individuals have accumulated in their own hands enormous extents of land, on which they feed countless flocks. Some among them possess from ten to twenty-four thousand sheep. Consequently, cultivation is abandoned, and the country depopulated[1]."

Bishop Latimer, in his famous sermon *On the Plough*, preached before the court of Edward VI. (1549), reproaches the nobles for being *inclosers, graziers, and rent-raisers,* transforming the yeomanry into disinherited slaves; the shepherd with his dog, he exclaimed, has taken the place of the vanished inhabitants. Bernard Gilpin accuses the gentlemen of want of

[1] For all this, see the work of Nasse, already quoted.

gentleness: "Driving the unfortunate from their homes is nc crime in their eyes." In 1551, the bishop of Rochester presents a petition to the king, in which he complains that twc acres out of three are taken from cultivation, and that the rura population will soon resemble "the serfs of France more than the old, prosperous yeomanry of England[1]."

After the death of Henry VIII., the protector Somerset instituted an extraordinary commission to examine the situation, and to seek a remedy. The most active member of this commission, John Hales, drew up a report, in which the condition of the rural districts is depicted in the most gloomy colours. "We can see nothing but houses in ruins and cultivators without homes; sheep and oxen have taken their place. The king can no longer find soldiers, and has to employ foreign mercenaries." This commission, which aroused so many hopes, had no result. The nobles were too powerful: witnesses were afraid to give evidence against them. The country people durst not appear, or were not summoned. Bills were submitted to Parliament, ordaining the division of the large farms, and limiting the amount which the proprietor might cultivate himself: but they were not passed.

Commencing with the great insurrection of the peasants in 1549, there were numerous local risings throughout the sixteenth century, all with the same object, the destruction of the enclosures which deprived them of their lands.

In the reign of Elizabeth, the price of wool still rising, the clearances and expulsion of the cultivators in no way abated; and the destruction of small properties has continued to our own days, by means of the "Enclosures Acts," passed successively from 1710 to 1843. These laws, which allowed the lords

[1] Sir Thomas More echoes the same complaints:—"Noblemen and gentlemen, yea, and even certain abbots, not contenting themselves with the yearly revenues and profits that were wont to grow to their forefathers and predecessors of their lands, leave no ground for tillage. They inclose all into pastures; they throw down houses; they pluck down towns, and leave nothing standing. And as though you lost no ground by forests, chase lands, and parks, those good holy men turn all dwelling-places and all glebe-lands into desolation and wilderness."

In the *Utopia*, a strange country is mentioned where sheep devour men. Bacon, in his *History of Henry VII.*, boasts of the acts of Parliament and the wisdom of the King, checking the usurpations of the great, the effect of which was to take the common lands from the inhabitants, to destroy the dwelling-houses, and to depopulate the country.

of the manor to enclose for their own use the common lands, wrongly regarded as their property, brought into private domain 7,660,413 acres[1], or one-third of the cultivated area of England, which in 1867 amounted to 25,451,626 acres. This immense amount of land was taken from the enjoyment of the cultivators almost without indemnity. In 1845, Lord Lincoln could assert in Parliament, without contradiction, that, in nineteen cases out of twenty, the House had disregarded the rights of the peasant, not from any feeling of antagonism, but from sheer ignorance. The country people could not produce, before the committee which discussed the laws, any proof of rights reposing merely on custom, nor could they pay counsel to defend them. They only

[1] The encroachments of lords of the manor on commons have been carried on in our own days. Some very curious details on this point may be found in a letter addressed by Mr Shaw Lefevre to the *Times* (17 Nov. 1874) with regard to Epping Forest. Going back no further than 1851, 559 illegal enclosures had been made in this forest, which was common property in which the city of London had the right of common pasture. The inhabitants of the neighbourhood were entitled to gather fuel there in winter, on this condition, however, that every year on December 11, at midnight, the oldest of them should fix his axe in one of the trees. A story is told of a certain Lord of the Manor who wanted to interrupt this prescription. On the given day he invited all the inhabitants to a supper, hoping to make them drunk, and make them forget the exercise of their right. An old man, however, stole away and fixed the axe in the forest. Later on a common workman named Willingdale resisted for thirty-seven years the enclosure made by the lord of the manor of Loughton. "It was about this time that great portions of Epping Forest were arbitrarily enclosed. In one single manor of that Forest the lord of Loughton, who was also rector of the parish, enclosed no less than 1300 acres of common. Sir Thomas Wilson, the Lord of the Manor of Hampstead, commenced the enclosure of that much-frequented common, and demanded £400,000 as the market value of it. The late Lord Brownlow enclosed 500 acres of Berkhampstead common with iron rails, and added them to his park. Queen's College, Oxford, was similarly advised by its solicitors to appropriate two important commons in the south of London—viz. Plumstead Heath and Bostal Heath, besides a smaller open space, known as Shoulder-of-Mutton Green. An enclosure was also made of Tooting Graveney Common. If these proceedings had passed unnoticed, there can be no doubt that in a very short time all the commons in and round London would speedily have disappeared."

The City of London, in an action to stop those encroachments, gained its case. A judgment of November, 1874, declared illegal all enclosures effected since 1851 on an extent of 3200 acres. At the present time the magistrates of the City betake themselves annually with great pomp to the Forest, in recollection of the right of hunting which they formerly exercised there. According to Mr Shaw Lefevre, there still remain, within a radius of fifteen miles from London, sixty commons of an average area of 130 acres, and 120 smaller commons with an average area of 20 acres. The thirty-second Report of the Enclosures Commission (1877) estimates that there still remain in England 2,000,000 acres of common land. Since 1845, 600,000 acres have been enclosed. See an excellent article by Miss Octavia Hill: "The Future of our Commons," *Fortnightly Review*, Nov. 1877.

learnt that they were dispossessed, when the enclosures, erected by virtue of Act of Parliament, prohibited access to the lands which they had used from time immemorial. The legislature ignored the existence of rights derived from the ancient *mark* organization. It allowed the lord of the manor's eminent domain; and thought, with economists, that the common lands should be surrendered to the more productive efforts of individual activity. In the middle ages and in the sixteenth century the copyholders had been despoiled of their property, because their title of occupation was deposited in the records of the manor, against the usurpation of which they had to defend themselves; and also because the judges all belonged to the class of their adversaries, who employed fraud, violence, and corruption, to attain their object.

Until the eighteenth century the legislature endeavoured to preserve small properties. The laws of Henry VII. ordained that every cottage should have four acres of land belonging to it. They tried to enforce this rule for a long time, but to no purpose. In 1627, in the reign of James I., Roger Crocker was fined for building a cottage on his domain of Frontmill, without the prescribed four acres. In 1636, Charles I. nominated a commission to devise a means of enforcing the ancient prescription. Cromwell renewed the prohibition against building a house without allotting at least four acres to it. In the first half of the eighteenth century complaints were made that the dwellings of the agricultural labourers had not at least one or two acres[1].

In the eighteenth century, on the contrary, legislation becomes favourable to large properties. The large landed proprietors took advantage of their power in Parliament to confiscate, by means of Enclosure Acts, all the domain of the ancient *folkland*. This was not effected without protest: and numerous writings appeared on the subject. "In a large number of parishes in Hertfordshire," writes an indignant pen,

[1] These details are borrowed from Karl Marx, *Das Kapital*, c. xxiv. It is perhaps too severe a picture of the concentration of property in England, but a great number of curious, and perhaps little known, quotations may be found in it. See also H. Denis, *Tendances actuelles du prolétariat européen*, in the *Revue de Philosophie positive*, March 1872 to January 1875.

"twenty-four farms, averaging from 50 to 150 acres, have been formed into three[1]." "In Northamptonshire and Lincolnshire enclosure of common lands has been effected on a large scale, and the majority of domains so formed have been converted into pasture, so that, where there were formerly 1500 acres of land under the plough there are now but 50. Ruins of houses, barns and stables, are the only traces left of the old inhabitants. In many places hundreds of houses with the families have been reduced to eight or ten. In the majority of parishes where the enclosure only dates from the last fifteen or twenty years, the number of proprietors is but small compared with that which cultivated the soil when the fields were open. It is not uncommon to see some four or five rich cattle-breeders usurping recently enclosed domains, which were previously in the hands of twenty or thirty farmers, and a large number of small proprietors and rustics. All the latter and their families have been expelled, together with a number of families whom they employed and supported[2]." It was not only waste lands, but those also which had been cultivated, either in common, or on payment of a certain rent to the parish, that neighbouring landowners annexed under pretext of "Enclosure." "I am now speaking of the Enclosure of lands and fields already under cultivation. Even the writers who support Enclosures are agreed that, in this case, they reduce the area of cultivation, raise the price of provisions, and lead to depopulation......And, even when applied only to uncultivated lands, the operation, as at present practised, deprives the poor of part of their means of existence, and encourages the development of farms which are already too large[3]." "When the soil," says Dr Price, "falls into the hands of a small number of large farmers, the small farmers" (whom he has elsewhere designated as so many *small proprietors, living themselves and their families on the produce of the soil they cul-*

[1] Thomas Wright, *A short Address to the Public on the Monopoly of Large Farms*, 1779, p. 23.

[2] Addington, *Enquiry into the Reasons for or against Enclosing Open Fields*. London, 1772, pp. 37, 43, *passim*.

[3] Dr R. Price, Vol. II. p. 155. Consult too Forster, Addington, Kent, and James Anderson (Karl Marx, *Das Kapital*, p. 756).

[After considerable search in the library of the British Museum I have been unable to find the original of these works, and am therefore compelled to retranslate most of the passages here cited.]

tivate, and the sheep, poultry, pigs, &c., which they depasture on the common lands) "the small farmers will be transformed into so many persons compelled to earn their living by labouring for others, and to go to the market to purchase what they require. More work will, perhaps, be done, because there will be more restraint......Towns and manufactures will increase, because more persons will be driven there in search of occupation." "In fine," to quote his summing up of the general effect of Enclosures, "the position of the lower classes of the population has deteriorated in all respects. The small proprietors and farmers have been reduced to the condition of day-labourers and hirelings, and at the same time it has become more difficult to earn a living in this condition." This usurpation of the common lands and the agricultural revolution consequent upon it were, in fact, so severely felt by the rural labourers, that, according to Eden himself, an ardent advocate of Enclosure, between 1765 and 1780 their wages began to fall below the minimum, and had to be supplemented by government aid. "Their wage," he tells us, "was insufficient for the first necessaries of life."

In the last years of the seventeenth century the yeomanry, a class of independent cultivators,—the "proud peasantry,"—were still flourishing. It was this class that constituted the strength of England in the middle ages, and to it she owed her superiority over France. At the end of the eighteenth century the yeomanry had disappeared[1].

The dispossession of the old proprietors, transformed by time into mere tenants, was effected on a large scale by the "Clearing of Estates." When a lord of the manor, for his own profit, wanted to turn the small holdings into large farms, or into pasturage, the small cultivators were of no use. The proprietors adopted a simple means of getting rid of them; and, by destroying their dwellings, forced them into exile. The clas-

[1] See *A Letter to Sir T. C. Bunbury, On the High Prices of Provisions, by a Suffolk Gentleman*, Ipswich, 1795, p. 4. A violent partisan of large farms, the author of the treatise, *An Enquiry into the connections of Large Farms, &c.*, London, 1773, himself says (p. 133): "I most lament the loss of our yeomanry, that set of men who really kept up the independence of this nation; and sorry I am to see their lands now in the hands of monopolizing lords, tenanted out to small farmers, who hold their leases on such conditions, as to be little better than vassals ready to attend a summons on every mischievous message." Karl Marx, *Das Kapital*, p. 752.

sical land of this system is Ireland, or more particularly the Highlands of Scotland.

It is now clearly established that in Scotland, just as in Ireland, the soil was once the property of the clan, or *sept.* The chiefs of the clan had certain rights over the communal domain; but they were even further from being proprietors than was Louis XIV. from being proprietor of the territory of France. By successive encroachments, however, they transformed their authority of suzerain into a right of private ownership, without even recognizing in their old co-proprietors a right of hereditary possession. In a similar way, the Zemindars and Taluqdars in India were, by the act of the British government, transformed into absolute proprietors. Until modern days the chiefs of the clan were interested in retaining a large number of vassals, as their power and often their security were only guaranteed by their arms. But when order was established, and the chiefs, or lords as they now were, began to reside in the towns and required large revenues rather than numerous retainers, they endeavoured to introduce large farms and pasturage.

We may follow the first phases of this revolution, which commences after the last rising under the Pretender, in the works of James Anderson[1] and James Stuart. The latter tells us that in his time, in the last third of the eighteenth century, the Highlands of Scotland still presented a miniature picture of the Europe of four hundred years ago. "The rent" (so he misnames the tribute paid to the chief of the clan) "of these lands is very little in comparison with their extent, but if it is regarded relatively to the number of mouths which the farm supports, it will be seen that land in the Scotch Highlands supports perhaps twice as many persons as land of the same value in a fertile province. It is the same with certain lands as with certain monasteries: 'The more mouths there are to feed, the better they live.'" When, in the last thirty years of the eighteenth century, they began to expel the Gaels, they at the same time forbade them to emigrate to a foreign country, so as to compel them by these means to congregate in Glasgow and other manufacturing towns. In his observations on Smith's

[1] James Anderson, *Observations on the means of exciting a Spirit of National Industry.* Edinburgh, 1777.

Wealth of Nations, published in 1814, David Buchanan gives us an idea of the progress made by the "Clearing of Estates." "In the Highlands," he says, "the landed proprietor, without regard to the hereditary tenants" (he wrongly applies this term to the clansmen, who were joint proprietors of the soil), "offers the land to the highest bidder, who, if he wishes to improve the cultivation, is anxious for nothing but the introduction of a new system. The soil, dotted with small peasant-proprietors, was formerly well populated in proportion to its natural fertility. The new system of improved agriculture and increased rents demands the greatest net profit with the least possible outlay, and with this object the cultivators are got rid of, as being of no further use. Thus cast from their native soil, they go to seek their living in the manufacturing towns...."

George Ensor, in a work published in 1818, says: "They (the landed proprietors of Scotland) dispossessed families as they would grub up coppice-wood, and they treated villages and their people as Indians harassed with wild beasts do, in their vengeance, a jungle with tigers......Is it credible that in the eighteenth century, in this missionary age, in this Christian æra, man shall be bartered for a fleece or a carcase of mutton, nay, held cheaper?......Why, how much worse is it than the intention of the Moguls, who, when they had broken into the northern provinces of China, proposed in council to exterminate the inhabitants, and convert the land into pasture! This proposal many Highland proprietors have effected in their own country against their own countrymen[1]."

M. de Sismondi has rendered celebrated on the Continent the famous Clearing executed between 1814 and 1820 by the Duchess of Sutherland. More than three thousand families were driven out; and 800,000 acres of land, which formerly belonged to the Clan, were transformed into seignorial domain. Men were driven out to make room for sheep. The sheep are now replaced by deer, and the pastures converted into deer-forests, which are treeless solitudes. The details of this new transformation are to be found in Mr Robert Somers' book, *Letters from the Highlands*, London, 1848, which appeared first

[1] George Ensor, *An Inquiry into the Population of Nations*, London, 1818, pp. 215, 216. See Karl Marx, *Das Kapital*, p. 759.

in the form of letters in the *Times*. *The Economist* of June 2, 1866, said on this subject:—"Feudal instincts have as full career now as in the times when the Conqueror destroyed thirty-six villages to make the New Forest. Two millions of acres, comprising most fertile land, have been changed into desert. The natural herbage of Glen Tilt was known as the most succulent in Perth; the deer-forest of Ben Aulden was the best natural meadow of Badonock; the forest of Bleak Mount was the best pasturage in Scotland for black-woolled sheep. The soil thus sacrificed for the pleasures of the chase, extends over an area larger than the county of Perth. The land in the new Ben Aulden forest supported 15,000 sheep; and this is but the thirtieth part of the territory sacrificed, and thus rendered as unproductive as if it were buried in the depths of the sea."

The destruction of small property is still going on, no longer however by encroachment, but by purchase. Whenever land comes into the market, it is bought by some rich capitalist, because the expenses of legal enquiry are too great for a small investment. Thus large properties are consolidated; and fall, so to speak, into mortmain, in consequence of the law of primogeniture and entails. In the fifteenth century, according to the Chancellor Fortescue, England was quoted throughout Europe for the number of its proprietors, and the comfort of its inhabitants[1]. In 1688, Gregory King estimates that there were 180,000 proprietors, exclusive of 16,560 proprietors of noble rank. In 1786, there were 250,000 proprietors in England. According to the "Domesday Book" of 1876, there were 170,000 rural proprietors in England, owning above an acre; 21,000 in Ireland, and 8,000 in Scotland[2]. A fifth part of the entire country is in the hands of 523 persons. "Are you aware," said Mr Bright in a speech delivered at Birmingham, August 27, 1866, "that one-half of the soil of Scotland belongs to ten or twelve persons? Are you aware of the fact that the monopoly of landed property is continually increasing, and becoming more and more exclusive[3]?"

1 *De Laudibus Legum Angliæ*, Cap. 29—36.
2 See note A at end of volume.
3 See an excellent article by Mr Shaw Lefevre, in the *Fortnightly Review*,

In England, then, as at Rome, large property has swallowed up small property, in consequence of a continuous evolution unchecked from the beginning to the end of the nation's history; and the social order seems to be threatened just as in the Roman empire.

An ardent desire for a more equal division of the produce of labour inflames the labouring classes, and passes from land to land. In England it arouses agitation among the industrial classes, and is beginning to invade the rural districts. It obviously menaces landed property, as constituted in this country. The labourers, who till the soil, will claim their share in it; and if they fail to obtain it here, will cross the sea in search of it. To retain a hold on them they must be given a vote; and there is fresh danger in increasing the number of electors while that of proprietors diminishes, and maintaining laws which render inequality greater and more striking, while ideas of equality are assuming more formidable sway. To make the possession of the soil a closed monopoly, and to augment the political powers of the class who are rigidly excluded, is at once to provoke levelling measures and to facilitate them. Accordingly we find that England is the country where the scheme of the nationalization of land finds most adherents, and is most widely proclaimed. The country, which is furthest from the primitive organization of property, is likewise the one where the social order seems most menaced.

The history of property in China and at Rome is very similar to that which we have just sketched for England. The oldest Chinese chronicles represent that country as having already arrived at the agricultural stage; but private property was not yet applied to the soil. The land was divided among all those who were capable of cultivating it, that is, among the inhabitants between twenty and sixty years of age. Each valley had an independent administration, and elected its own chiefs; the sovereign being also elective. These officers had certain

Jan. 1877. 5,000 persons own two-thirds of the country, or an average of 10,000 acres each. See also Mr Cliffe Leslie. Even the partisans of large properties cannot deny that they devour small properties. "It is quite true," says Mr Froude, "that about two-thirds of Great Britain belong to great peers and commoners, whose estates are continually devouring the smaller estates that adjoin them."

lands assigned to them, the produce of which enabled them to live according to their dignity. This is exactly the same system as we have seen in Germany. From the year 2205 B.C. the empire became hereditary[1]. The provincial chief also usurped a hereditary right of succession. The sovereigns made grants of land reserving certain rents, and the lords in turn did the same. A kind of feudalism was thus established; the property cultivated by the peasants, however, continued to be divided among the families proportionally to the number of hands which each could command. In the partition, the distance of the lands was taken into account, and a smaller portion given in those which were nearer at hand. One lot in nine had to be cultivated for the benefit of the State by the families who obtained the remaining eight. The system of common lands, *gun-tjan*, was maintained until about the third dynasty, 254 B.C., and lasted to our own times in the remote districts of Corea. Private property was introduced by the house of Zin: but gradually, as the chronicles tell us, the rich usurped all the lands, and then let them to the ejected cultivators, reserving half the produce as a rent. The government has since, at different times, had recourse to agrarian laws to augment the number of proprietors. The most remarkable and most general of these laws is that promulgated by the Tan dynasty (619—907). Every individual, provided that he had a separate house, received a portion of land in perpetuity; and a second piece temporarily, conditionally on his being in a position to cultivate it. The portion assigned to the different classes varied according to their rank and dignity. The private property was inalienable, except in extreme cases. Life estates returned to the State, to be re-distributed. This system did not long remain in force; about the year 1000 it gave way to absolute private property, which, notwithstanding the Mantchou conquest and revolutions, has survived to the present day.

Landed property, therefore, in the evolution of centuries, has passed through similar phases there to those which it has traversed in the West.

[1] These details are borrowed from a résumé of the memoirs of the Russian mission at Pekin, by M. J. Sacharoff. See *Revue Germanique* (first year).

CHAPTER XIX.

CO-OPERATIVE CULTIVATION.

AT the present time there seems to be a desire to reconstitute the old agrarian communities under a new form. In England several agricultural undertakings have been established on the principle of co-operation. One of the oldest is that of Balahine, in Ireland, started in 1830 by Owen's disciple, John Scott Vandeleur. It seems to have met with the best results, both in a moral and economical point of view[1], until the experiment collapsed suddenly on the flight of Vandeleur, who was ruined at play. The report of the Rev. James Fraser, the present bishop of Manchester, government commissioner in the inquiry as to the employment of women and children in agriculture, brings before us two agricultural co-operative societies, which seem to succeed perfectly. They were on the estates and under the supervision of Mr Gurdon, of Assington Hall, near Sudbury in Suffolk. The first dates from 1830. It was formed, at the suggestion of Mr Gurdon, by the association of fifteen ordinary labourers, who each contributed three pounds, and a further sum of four hundred pounds was advanced by the landlord. They have now extended their farm from sixty to a hundred and thirty acres. They have returned the money advanced to them, and each share is worth about fifty pounds, which represents more than sixteen times what was originally invested. One of the associates, elected by his fellows, directs the cultivation, having a committee of four to assist him. The associates may sell their share; but the

[1] See Mr William Pare's *Co-operative Agriculture*, which contains interesting details. The author, however, carried away by the attraction of his own Utopia, has perhaps given too highly-coloured a view.

consent of the landlord and of the society is necessary for the validity of the sale and the admission of the new associate.

The second society was formed in 1854 under the same conditions, with the same success. Mr Gurdon again advanced four hundred pounds, which has been repaid to him. The land cultivated has been from time to time enlarged, and now extends over two hundred and twelve acres, the rent of which is two hundred and thirty-five pounds. The original shares, for which three pounds ten shillings were given, are now worth more than thirty pounds. Mr Fraser has much to say of the advantages of the system; and another writer, who also visited the Assington co-operative agricultural associations, confirmed, in the *Pall-Mall Gazette* of June 4, 1870, the correctness of the facts given by Mr Fraser. The celebrated German economist Von Thünen, about 1848, introduced, upon the land of Tellow in Mecklenburg, the system of participation in the profits in favour of his agricultural labourers. According to evidence furnished by Dr Brentano, of the Berlin statistical department, this experiment, which was carried on in spite of the death of Von Thünen, is giving excellent results; for each labourer receives an annual dividend of about twenty-five thalers, and the oldest among them have a capital of five hundred thalers in the savings-bank.

The working classes in England at the present time regard the idea of applying co-operation to agricultural labour with much favour: and it was even advocated by Mill, who would have had the State grant to co-operative agricultural societies a portion of the common land still existing. These schemes have found their echo in the antipodes, and an association has just been formed at Melbourne, in Australia, called the "Land Reform League," the object of which is to restrain sales by the State of public lands, which it would retain as provision for the future.

There is no doubt that it would be desirable to see co-operative association applied to the cultivation of the soil. Its advantages have been fully shewn by several economists, by Rossi amongst others. Of these advantages the two most important are: first, that a reconciliation is by this means effected between labour and capital, which are at the present time

always engaged in a lamentable struggle; and secondly, small properties, which are desirable in a social point of view, are associated with cultivation on a large scale, which is no less profitable economically, as employing machinery and a systematic distribution of crops. But we must not be deluded with the idea, that association of agricultural labour could be easily introduced into general practice. The success of the experiments made in England at Assington, and in Germany on the land of Tellow, is in great measure due to the prevailing influence of Mr Gurdon and of Von Thünen. The old agrarian communities were actually co-operative agricultural societies: they were founded on ties of blood, family affection and immemorial tradition; and, this notwithstanding, they disappeared, not by the hostility of state powers, but from the gradual influence of the sentiment of individualism, or of egotism, characteristic of modern times. In the place of family spirit, which has waxed feeble, will a new sentiment of collective fraternity develop itself with sufficient force to serve as cement for future associations? It is a consummation we may hope for, and the difficulties of the existing situation make it singularly desirable. It is, however, too evident that the labouring classes, especially in the country districts, still want the enlightenment and spirit of mutual understanding essential to the success of co-operative association. Much as we may hope that a brilliant future awaits such association, we must admit that its hour has not yet come; though, probably, it is to come.

All clear-sighted economists have seen the necessity of agricultural co-operation. To quote Rossi on the subject[1]:

"Extensive property and extensive cultivation, small property and small cultivation, are not ideas which are necessarily construed each by the other....How can cultivation on a large scale be applied to small properties? The answer is, 'By association.'...The spirit of association is natural to man, alike in all times and in all countries.... In France the spirit of association will be spread by the multiplication of small capitalists, and to a still greater extent by the diffusion of enlightenment and of popular education....

"The cultivation of grain, of roots, of resinous or dye-producing plants, of pasture and forests, as well as the dissemination of sanitary and economic principles, are objects to which association may be applied with ease and advantage....

[1] *Cours d'économie politique*, Vol. II. Lesson 5, pp. 101—138.

"The terms of association must vary with the manners and customs of the country, with the kind of cultivation, and the nature of the produce. In some localities, by means of association a large property may be formed of several small holdings, and let to a tenant, while the proprietors can find more useful employment for their labour in some manufacturing industry. Elsewhere an administration may be organized for joint expenditure under the direction of one or more of the associated proprietors. Here they may unite solely for the purchase and employment of certain agricultural machines and implements; there, to organize means of irrigation, and to distribute water among the persons interested. Where would the principle stop? The mind of the labourer, once awakened, would not be slow in finding the forms of association best adapted to local circumstances.

"The cultivators are not such strangers as may be supposed to the idea of association, common interest, and division of profits....

"Unfortunately, the public has at present no very clear idea of the conditions of the problem which it is called upon to solve. So the progress in question cannot be sudden: it is an end towards which we are advancing gradually day by day. Between the dissolution of the old ties, and the spontaneous formation of new ones, which under the empire of civil equality are to unite and co-ordinate individual forces, there was of necessity an intermediate state, an epoch of transition, of agitation and of difficulty, subject to the passions and controversies of mankind. This interval, full of difficulties and dangers, we have nearly completed: we can see distinctly its boundary-line, but it would be a delusion to suppose ourselves already arrived at it, when we are still only on the way....

"...Unless all that we have just said is entirely without foundation, the economic results of laws regulating property in land may be modified and corrected by agreements between the owners of land, and especially by association. Henceforth the interest of all questions of succession grows weaker for the economist. What matter great or small properties, the amount of the reserve land, the limitations imposed on testators, and other questions of this nature, where the proprietors, whatever the extent of their possessions, can apply according to circumstances cultivation on a large or small scale, and derive in any case the greatest possible advantage from that powerful instrument of production, the soil?"

"When subdivision shall have produced all its fruits," says Louis Reybaud, "and in consequence of its obvious disadvantages men return from small cultivation to cultivation on a large scale, new progress will be achieved in an alliance of human interests. Association will be the offspring of the continued subdivision of property[1]."

"Association is calculated to banish pauperism, and to assemble in systematic social order the disconnected elements of modern society. The principle of association will restore to the world the peace for which it is athirst. Those who become its apostles and

[1] *Études sur les réformateurs modernes*, Vol. I. p. 198.

obtain it a hearing, will be the benefactors of the human race[1]." These are the words of M. Michel Chevalier.

To quote next M. Wolowski[2]: "Social progress cannot consist in the dissolution of every kind of association, but rather in the substituting in the place of the compulsory and oppressive associations of times past, voluntary and equitable associations, combinations not merely for security and defence, but for common production."

"The spirit of association and the spirit of family divide the world between them," said M. de Cormenin when treating of agricultural association[3].

"Providence has implanted these two instincts in man. Both, when wisely employed according to the object in view, conduce alike to the individual and social welfare.

"The division of properties is tending, in more instances than one, to produce the same inconvenience as their extreme accumulation.... In countries where the soil is minutely subdivided, the peasant, who is half-labourer, half-proprietor, has all to gain by association. For him it can work marvels.

"Further, consider the moral effect of such association; increased welfare in the present, security of mind for the future, and respect for oneself and one's neighbours. Consider the pledges of mutual good will, the salutary and wide-spreading influence of example, the healthy, voluntary discipline, observance of engagements, and internal peace for the community!"

[1] Michel Chevalier, *Dict. de la Conversation*, art. Population.
[2] *Leçons au Conservatoire des Arts-et-Métiers*, 16 Dec. 1844.
[3] *Entretiens de village*, etc. XXII.

CHAPTER XX.

HEREDITARY LEASES.

THERE is an ancient form of property, which legislators and economists should not fail to examine, as it may contribute to the settlement of the struggle, which is everywhere going on, between those who cultivate the soil and those who take the rent; this is the hereditary lease, known in Holland under the name of *beklem-regt*, in Italy as the *contratto di livello*, and in Portugal as the *aforamento*. It is also to be found in France, in various provinces, under various names. In Brittany the term is *quevaises;* in some places *domaine congéable;* and, in Alsace, *erbpacht*. As under the feudal system, the full proprietorship is, so to say, carved into two distinct rights: the right of the proprietor, which is actually nothing but a kind of mortgage claim, and the right of the tenant, which is a sort of hereditary usufruct. In Portugal, the *aforamento* gives the occupier of land the right to hold it in perpetuity, conditionally on his fully performing the terms of the contract. He has to pay regularly a rent fixed once for. all, which the proprietor cannot raise. When the land changes hands, the proprietor is entitled to a duty, which is called *luctuosa*, when the transfer is in consequence of a death; or *laudemium* when it is the result of a sale. Land held in *aforamento* is essentially indivisible; hence, when there are several heirs, one must take the whole domain and pay an equivalent to the others, or else the land must be sold.. In default of heirs near enough to succeed, the *aforamento* perishes, and the bare ownership now becomes full ownership. The *aforamento* is more or less in use throughout Portugal; it is not unknown in Alemtejo, and is

common in the Algarves; but, North of the Tagus, it is the mode of tenure generally practised, and to it is attributed the excellent cultivation and the comfort of the cultivators, which distinguishes the province of Minho. The *aforamento* seems to date from the earliest times of the monarchy; and is supposed to have been first established on the lands of the Benedictine monks.

In Italy the *contratto di livello* was very general in the middle ages, and still exists in several provinces, especially Lombardy and Tuscany. In ancient documents, from the sixth to the thirteenth century, the *libellarii* frequently appear. The principal rules of the contract M. Jacini supposes to date from the time of the Roman empire. M. Roscher sees their origin in the *emphyteusis*, which the middle ages borrowed from the Roman law. The assignment of immoveable property, which the owner could not himself turn to advantage, to cultivators, who engaged to till it for a fixed rent or *canon*, and a payment of certain duties, *laudemium*, in case of alienation, was a contract beneficial to both parties; and it is not surprising that large proprietors in the middle ages, who had neither capital nor tenants to cultivate their vast domains, should have had recourse to this means of securing a guaranteed revenue. *Livelli* are now gradually disappearing in Italy; first, because there, as in Portugal, the legislature and the courts are alike hostile to these perpetual rents, which, they say, recall feudal rights; secondly, because the system of full ownership is now thought the only reasonable one, and every thing in restraint of it is tolerated with impatience.

The *beklem-regt*, which is general in the Dutch province of Groningen[1], is exactly similar to the Portuguese *aforamento*. This is additional evidence in support of Tocqueville's remark, that, in the middle ages, under an exterior of great diversity, customs were everywhere fundamentally the same. The fact of the *beklem-regt* and the *aforamento* presenting, at the present day, identical features in the two extremities of Europe, is a proof that this contract must formerly have been customary in the intermediate countries. It is exactly the same with these ancient

[1] For details see the Author's *Essai sur l'économie rurale de la Néerlande;* and for the *contratto di livello*, his *Études d'Économie rurale—Lombardie.*

institutions as with certain alpine plants, which are only to be found now in the polar regions and on the lofty mountains of Switzerland; but which grew throughout Europe in the glacial period.

The *beklem-regt* is a right of occupancy, at a fixed rent, which the proprietor can never raise; the right passes to the heirs in the collateral line as well as in the direct. The tenant, or *beklemde meyer*, can devise, sell, let, or even mortgage the land without the proprietor's consent; but every time the right of occupancy changes hands by inheritance or sale, the proprietor is entitled to a fine of one or two years' rental. The buildings which are on the land belong as a rule to the tenant, who can claim the price of the materials, if his right of occupancy is at any time extinguished. The tenant pays all imposts: he may not change the form of the property, nor do anything to depreciate its value. The *beklem-regt* is indivisible: it can never vest in more than one person, so that one only of several heirs has to take it as his portion. In paying the stipulated *canon*, however, in case of alienation—the *propinen*—the husband may insert his wife's name, or the wife her husband's, and they then have a right of survivorship. The word *propinen* obviously comes from the Greek *προπίνειν*, to drink—the formal emptying of the cup. It recalls the practice of the Germans, who, according to Tacitus, ratified all their juridical transactions with a draught of wine. *Propinen* is the equivalent of the *pot de vin*, paid in several countries on the renewal of a lease. The annual rent due to the proprietor varies much, and according to the time when the rent was determined, rather than the actual value of the land. It is found at from five or six to thirty or forty florins the acre. The market value of the tenant's right depends on the price of produce, the state of agriculture, and also on the figure of the annual rent. About 1822, the value of the *beklem-regt* had fallen so low, that no purchasers were to be found. Since the opening of the English market, however, the tenant has seen the value of his occupancy increase to such a degree, that he has begun to sub-let to ordinary tenants, a result to be regretted, as henceforth all the advantages of the *beklem-regt* disappear. When in full ownership, the land is sold at about

2,500 to 3,000 florins the *hecture.* If the tenant fails, or is in arrears with the annual rent, the *beklem-regt* is not absolutely extinguished: the creditors have the power of compelling a sale; but the purchaser has first to pay the proprietor all arrears.

The origin of this curious variety of hereditary lease is very obscure. It seems to have sprung up in the middle ages on monastery lands. The soil being then of little value, the monks readily granted to cultivators a certain extent of soil, on condition of their paying a certain annual rent, and also a fine at each death. This arrangement secured a fixed income for the monastery, and also freed it from the management of property, which as a rule produced nothing. The large proprietors and civil corporations also adopted the system. They seem to have reserved the right of ejecting the tenant every ten years; but they never exercised it, because they would have had to pay the value of buildings, and would also have had difficulty in finding a new tenant. During the troubles of the sixteenth century, the right became hereditary, or at least was declared such by several decisions. Jurisprudence and custom settled the various points in dispute; a more definite formula was framed and generally accepted, and from that time the *beklem-regt*, so determined, has existed side by side with the Civil Code. It has always been respected, and been more and more generally adopted throughout the province of Groningen. What surprises one is that this right, which seems so complicated and antiquated, can spread and gain ground even now. The explanation of this strange economic fact is that, in the first place, the proprietor, who wants to grant the *beklem-regt* over his land, receives a considerable sum, and still retains, at any rate nominally, the ownership. Again, a man who cultivates his own land and is in want of money, can sell the bare right of ownership, retaining the *beklem-regt* for himself. The most frequent origin, however, of new contracts of this nature is a public sale; because, if the true proprietorship and the hereditary lease are sold separately, a higher sum is realized than if the full property is sold at once. For this reason the *polders* (land recovered from the sea), where the dams have only been constructed some twenty years, are subject to the *beklem-regt.*

Whoever has considered the inconveniences of the ordinary lease, will have no difficulty in understanding the advantages of the contract adopted in Groningen. One of the most able writers on this subject, M. Hippolyte Passy, remarks with reason: "There is no kind of lease really favourable to the progress of production, but such as, by well conceived stipulations, makes it to the constant interest of the cultivators to neglect nothing that increases fertility either in the present or the future." Now the *beklem-regt* fulfils this condition perfectly. The tenant can undertake the most costly improvements: he is sure to derive the full profit from them; and he is not threatened, like the ordinary tenant, with an increase of rent proportional to what he has done to increase the fertility of the land he occupies. The legitimate reward of labour is the produce which it creates; and man labours harder when he is sure of enjoying the fruits of his efforts. The *beklem-regt*, assuring the cultivators the full enjoyment of any increase in the produce, is therefore the most active stimulus: it encourages the spirit of improvement, which short leases only penalize.

M. Roscher maintains that a tenant will apply more capital to the cultivation of the soil than the proprietor, because the latter has to devote a considerable sum to the purchase of the land, which the former can employ to increase the intensity of cultivation. This remark is specious, but scarcely well-grounded. As a matter of fact, the purchaser of land can raise on mortgage a sufficient sum to improve the cultivation. He will then pay in the form of interest what he would have paid as rent: and will have this immense advantage, that he will profit exclusively by all improvements, without any risk of seeing them turn out so much loss to him at the expiration of the lease. In any case, the *beklem-regt* is entirely free from the disadvantage pointed out by M. Roscher. The cultivator, purchasing only a hereditary lease, obtains it at a cheaper rate, and can devote to cultivation all the surplus which he would have had to lay out in the purchase of the bare proprietorship, which he now leaves to another. While only laying out a far smaller sum than he would have had to give for the entire property, he is nevertheless sure of enjoying the good results of all the work he may

carry out. The *beklem-regt* therefore unites the advantage, which M. Roscher attributes to the lease, with the security for the future afforded by ownership.

Another objection has been raised against the property in the soil residing in the cultivator. It is said that the proprietor cultivator, certain of his subsistence, and not being stimulated by any rise of rent, sinks into routine, and does not obtain from the soil all that it can produce. This objection reminds one of the quaintly cruel question in Cardinal Richelieu's will: To what extent are we to suffer the people to live in comfort? We cannot believe that property, which gives comfort to the labourer, lulls his activity to rest; and we still think that no one will get more produce out of the soil than its owner. But, even if it were otherwise, the *beklem-regt* would again, in this case, have the advantage over ordinary ownership; for, as one alone of the children can inherit the holding, the father will be stimulated to obtain from the soil all that it can give, so as to save the portions for his other children; otherwise it would be necessary to sell the hereditary lease to avoid its indivisibility. We may, therefore, assert that the *beklem-regt* is even more favourable than ownership to good cultivation, as allowing the application of more capital, and urging him, who cultivates it, to redouble his efforts to obtain as large a harvest as possible.

As land subject to hereditary lease cannot be divided without the consent of the proprietor, this contract is a natural obstacle to the "*morcellement*" of lands. It prevents unsuitable cutting up of properties resulting from equal partition, and at the same time does not, like the *majorat*, or entail, exclude a division recommended by sound economy, for if the division brings a real advantage, it needs only an assignment to the proprietor of some share of the profits to obtain his consent.

Those who, struck by the forewarnings of Malthus, fear the excessive increase of population, are likely to be partisans of the *beklem-regt*, for the system affords an efficient check to it. The number of holdings is limited; and as the sons of the cultivators are accustomed to live in comfort, they only regard marriage as likely to increase the rent of lands, by reason of a

rash competition, tending to produce *morcellement*. Having a certain amount of education they emigrate or choose a career; and when they take a wife it is because they have the means of supporting her and the children she may bear them. Thus the *beklem-regt* is alike favourable to the production of wealth, and tends to limit the number of those who have to share it; and so contributes by a double action to increase the prosperity of the population.

But, it will be said, if this system of leases is superior to the ordinary term of years, it is inferior to ownership. Undoubtedly it is, in some respects, as the *beklemde meyer* has to pay a rent, whereas the owner pays none; but there is one great distinction in favour of the *beklem-regt;* namely, that under this system, the *beklemde meyer* cultivates for himself, whereas the proprietor would let the land. Suppose the *beklem-regt* abolished in Groningen, and what would be the result? Here, as in all places where land is very valuable, the owner of half a million francs in the shape of eighty or one hundred *hectares* of land, would go and live in a town, grant the cultivation of his land to a tenant, and take care to raise his rent regularly every six or nine years.

The effect, therefore, of an anomalous right, borrowed from the middle ages, has been to create in Holland and Portugal, a class of cultivators enjoying all the advantages of ownership, except that they do not retain for themselves the net profit, which is precisely what would have alienated them from cultivation. Instead of tenants fearing to lose their farm, recoiling before every costly improvement, concealing their prosperity and dependent on their master, we find, in Groningen, a class of usufructuaries, proud, independent and simple in habits, but eager for information, appreciating the advantages of education, and neglecting no means of spreading it. They practise agriculture, not as a blind routine or contemptible trade, but as a noble occupation, which brings them fortune, influence, and universal respect. They are economical in their own wants, but prodigal to their estate; ready to make any sacrifice to drain their land, to rebuild or enlarge their farm buildings, and to procure the best machines and the best strains of animals; and content, moreover, with their condition,

because their lot depends on nothing but their own activity and forethought.

So long, then, as the *beklemde meyer* cultivates his own land, the hereditary lease produces good results. But, unfortunately, these results fail so soon as in the exercise of his right of sub-letting, he grants to another the right of cultivating his estate, for a rent which he receives, and out of which he pays the holder of the bare ownership. From this time all the disadvantages of the common lease reappear; and we return to the ordinary conditions, which are found elsewhere,—with this difference, that the cultivator has to support two classes of idlers instead of one. Sub-letting was rare in former times, because the profits derived from cultivation were only sufficient to support the family of the *beklemde meyer*, when he cultivated the land himself; but since the rise in the price of all articles of food, and especially since the opening of the English market, the profits have been so large, that a sub-tenant can be found ready to pay a rent in excess of that taken by the proprietor. Under-letting thus came into use,—a fact which we cannot but regret having to acknowledge.

In the island of Jersey the same mode of tenure is still in force. In France, in the "*terriers*" of most monasteries and cathedrals, grants of land are found, the nature of which is indicated by the formula *damus in perpetuam emphyteusim.* This kind of tenure was, therefore, very general. The *quevaises* likewise had all the characteristics of hereditary leases; but, according to information communicated by M. de Lavergne, the proprietor has gradually acquired the right of ejecting the tenant, on compensating him for the value of the buildings, as determined by an expert.

The *bail à domaine congéable* is a tenure peculiar to Brittany, where it is especially in force in the *usemens* of Rohan, Cornouaille, Léon, Brouerec and Tréguier. Its origin is thus explained in Art. 3 of the *usemen* of Tréguier: "When the proprietor of a house or lands in the country is in want of money, or when he wishes to secure the rent of land at a distance, and not to be troubled with repairs, he grants the land or house in *covenant* or *domaine congéable*, on condition of the payment of a rent and the performance of the usual *corvées*,

to be held in perpetuity, subject, however, to the right of the lord to eject the holder at any time, on paying him such compensation as is appraised." "The condition of this lease," says Merlin, "is a clause of this sort: '*I grant you the soil* IN PRECARIO, *and all on the surface in full ownership;*' such a tenure is therefore more advantageous to the tenant than the ordinary lease, inasmuch as he does not lose the improvements, as in the ordinary lease[1]."

Anton, in his History of Agriculture in Germany, quotes numerous examples of hereditary leases, which date back to the twelfth and thirteenth centuries. This contract was also very common in the agricultural colonies founded in Germany in the middle ages, by Flemish and Dutch cultivators. In Prussia, Saxony, Hesse and the greater part of Germany, the *erbpacht* or hereditary lease was established on State domains at the beginning of the eighteenth century, short leases being then generally condemned. On the other hand, laws of the present century prohibit what is the very essence of this contract, the creation of an unredeemable rent, regarding it as a remnant of feudalism. Still the hereditary lease, under the conditions of the *beklem-regt* and the *aforamento*, affords real advantages. A proof of this is the exceptional prosperity which it secures to two regions, that in other respects have absolutely nothing in common, Minho in Portugal and Groningen in the Low Countries. These advantages are indisputable. The *aforamento,* imposing indivisibility on the soil, checks excessive *morcellement:* it gives full security to the tenant, and so encourages him to effect all necessary improvements, however costly they may be. It is, therefore, very superior in this respect to the temporary lease, which takes from the farmer every guarantee for the future and every motive for the sinking of capital in the land.

These ancient forms of property have been noticed, because modern societies have not yet arrived at a perfect or definite

[1] See Merlin, *Rép.*, I. p. 590, and Aulnier, *Traité du domaine congéable.*—In Denmark there are taxes which last during the life of the lessee or *Fæster:* they are called *Livfæste.* The *Fæster* has to pay the *indfæstning* (*laudemium*), when he gets possession of the land, and also an annual rent, *landgilde.* He may neither sub-let nor alienate his right of occupancy. Certain properties are necessarily subject to the *Livfæste.* This obligation is called *Fæstetvang.*

agrarian organization. The social future is so gloomy that we should seek everywhere, even in the past, for the means of allaying the danger. Undoubtedly these institutions of primitive times can never spring up again; the ideas, the requirements, and the sentiments of the patriarchal age produced them, and alone could perpetuate them. Now, all this has vanished to return no more. Fraternity and the intimate association resulting from it disappeared, first from the village, then from the family. In the present day the isolated individual has to face the joint-stock company or the religious community, which take the place of patriarchal families and communities. What is to prevail finally?—Small independent property, such as has existed in France since the Revolution, or *latifundia,* as at Rome or in England? A very prevalent opinion is that it will be the *latifundia,* for the same reasons that enable industry on a large scale to crush industry on a small scale; that is to say, the employment of machinery, the superior information of the large employers, and the all-powerfulness of capital. In agriculture, however, the triumph of large enterprises is not so decisive; because agricultural labours, being intermittent, do not so well allow of the application of machinery; and because, further, the limited extent of productive land makes the price of agricultural produce depend on the cost of producing the most expensive.

Yet it is not impossible, that, as many economists believe, the supremacy of capital will lead in the long run to the absorption of small property by the *latifundia,* just as small artisans succumb in the competition with giant manufacturers. If the final result is destined to lead us once more to an agrarian situation such as existed under the Roman empire, where a few proprietors of enormous wealth live in pride and luxury, too often accompanied by depravity, while beneath them the agricultural labourer remains plunged in a state of ignorance and misery, and where envy and hatred are continually setting the two classes in antagonism and almost in open war: if such is to be the end, we cannot refrain from casting back a glance of melancholy regret to these primitive epochs, when men, united in family groups by bonds of blood

and fraternity, sought by common toil the means of satisfying their few, simple wants, as do the Servians of the present day, ignorant, it is true, of the luxury, but also ignorant of the bitter cares, the cruel doubts and unceasing struggles which agitate modern societies.

CHAPTER XXI.

THE MARK IN HOLLAND.

IN the sandy region of Holland, the Germanic *mark* still exists; especially in Drenthe, the hunting demesne of the German emperors, granted by Otho the Great to the bishop of Utrecht, in 943. Surrounded on all sides by marsh and bog, this province formed a kind of island of sand and heath, on which ancestral customs were preserved in their entirety. Even in our day, we find the ancient organization of the Saxon *mark;* the *saxena marka,*—traces of which are also to be seen in the district of Westerwolde in Groningen, in the whole of Over-Yssel, in the country of Zutphen, in the Veluwe and even in Gooiland, at the gates of Amsterdam,—that is, in all parts of the diluvial sandy region which was occupied by the Saxons in the fourth century.

The *mark* was the whole territory belonging to the tribe, or to a group of families in the tribe. It comprised wood, plain and arable (*het houd, het veld en de essch*). The name *mark* was also applied to the wide waste lands surrounding the cultivated land, and forming an uninhabited border destined to serve as frontier. "Civitatibus maxima laus est, quam latissimas circum se vastatis finibus solitudines habere...Hoc se fore tutiores arbitrantur, repentinæ incursionis timore sublato" (Cæsar, *de Bello Gallico,* VI. 23). The origin of the *mark* is lost in the obscurity of pre-historic times. When we first come upon it in the Saxon provinces of the Low Countries, individual property had already invaded the primitive community, and from then to our own time the organization has scarcely changed. A share in the *mark* was called *whare;* and those who possessed *wharen,* bore the name of *erfgenamen,* inheritors,

that is, participators in the joint inheritance. The possessors of a *whare* (*gewaardemark genoten*) were entitled to send their cattle to graze on the heath of the *mark*, and to cut turf there for litter or firing.

This collective and undivided property, the *mark*, was formerly not transmissible by sale or grant. Now, however, the tribunals have decided that it can be alienated like all other landed property. When, in order to divide the property, the *mark* is sold, the purchase-money is distributed among the co-proprietors, according to the number of *wharen* or parts that they hold in it. This ancient system, which formerly embraced the whole territory, still comprised in 1828, in Drenthe alone, 160 *marken* of 126,398 *hectares*, or about half the province. In 1860 there only remained 43 *marken*, comprising 32,995 *hectares*. Even after partition, however, nearly all the territory of the ancient *marken* remains subject to common pasturage, and 40 per cent. of the total area is not under cultivation. It is interesting to find still intact an ancient agrarian institution much older than the commune[1] or the parish, which, dating from the days when the Germans worshipped Thor and Woden, has resisted alike the feudal system and modern centralization, and continues its existence, in spite of the text of the Code Civil, just as we see in Italy strong and indestructible fragments of cyclopean substructures jutting out beneath modern monuments.

Formerly the partners in the *mark* met once a year, on St Peter's day, in a general assembly, *holting*. They appeared in arms; and no one could absent himself, under pain of a fine. This assembly directed all the details as to the enjoyment of the common property; appointed the works to be executed; imposed pecuniary penalties for the violation of rules, and nominated the officers charged with the executive power, the *markenrigter* and his assessors. The *markenrigter*, or head of the *mark*, was also called the *markgraaf*, count of the *mark* or marquis. He, like the count of the dike (*dykgraaf*), watched over the common interests. It is easy to recognize in these

[1] In every commune of relatively recent formation there are several *marken*. The commune of Westerbork contains nine, that of Rolde nine, and that of Beilen twelve, and these twelve *marken* comprised an area of more than 10,000 *hectares*.

natural associations, founded on the common ownership of land, *all the elements of the representative system and the innate habits of self-government*, which have been carried across the ocean by the descendants of that same Saxon race, sent forth in times past from the sandy region of Holland, and have given birth to the communes, the counties and the States of North America and Australia. The essential features of the *mark* organization still subsist. It forms a small administration, supplacing in many respects the commune. It superintends the distribution of water, the keeping up of roads, and the cultivation of common lands, and elects officers to carry out its decisions. They are, however, no longer armed warriors assembling in the *holting* after sacrificing to Woden, but peaceable proprietors, and pacific cultivators meeting after a good dinner at the common expense. The mound where the *holting* met (*Malenpol*), is still visible in Heldermalenveld and at Spoolderberg near Zwolle.

In crossing the vast plains of Drenthe or Over-Yssel, one sees from time to time rising above the level of the heath a large field, generally covered with a heavy crop of rye. It is the portion of the *mark* devoted to cultivation, the *essch*,—a name which seems to come from an old root that also gave the Latin *esca* and the German *essen*, to eat, and here designates the land from which the population derive their sustenance. The *essch* was formerly the common stock, in which each member of the *mark* received annually his portion to cultivate, as is clearly proved by Tacitus and Cæsar. "Neque quisquam agri modum certum aut fines habet proprios; sed magistratus ac principes in annos singulos gentibus cognationibusque hominum, qui una coierunt, quantum et quo loco visum est, agri attribuunt, atque anno post alio transire cogunt." (Cæsar, *de Bello Gallico*, VI. 22.) During the middle ages, these shares were gradually absorbed in private ownership, but individual property is still far from being freed from the fetters of the primitive community, for all the ancient customs of common cultivation continue to exist. The *essch* is divided into a great number of parcels. But as there is no road across this vast cultivated field, there is no approach to the several parcels so long as the crops are standing; and there are no boundaries except four large irregu-

lar blocks of granite in the four corners. It follows from this arrangement, that all the parcels have to be cropped with the same grain, and must be ploughed, sown and reaped at the same time. For, if a proprietor wished, for instance, to sow a spring cereal when his neighbour had adopted a winter cereal, he could not till his ground or cart his manure without causing material damage, for which he would have to pay compensation, and which would draw on him general ill-feeling.

The triennial rotation is generally followed. The arable is divided into three portions: the *winter-essch*, sown with winter rye; the *Zomer-essch*, sown with summer rye; and the *brach-essch*, which formerly lay fallow, but where buckwheat is now grown. The collective body of cultivators is called *de boer*, that is "the peasant." They meet in full assembly (*hagespraak*), in the open air under immense oaks of centuries' growth, or in a kind of grassy amphitheatre, in the centre of which the old sacrificial altar of stone is still often standing. The cultivator, who keeps the communal bull, also has charge of the cow-horn, which summons the inhabitants to the assembly, and gives the signal for the various works to be executed in the fields. When all interested are assembled, they deliberate and fix the period for ploughing, sowing and harvest. In this assembly, also, are chosen the four *volmagten* charged with executive power;—with this thoroughly democratic reservation, however, that the *kotters*, or simple labourers living in a cabin, should nominate two, and the *boeren*, or cultivators owning horses, should nominate the other two. When the day fixed for harvest arrives, the horn is sounded at daybreak and all set to work. In the evening when the signal to cease is given, everyone is forbidden, under penalty of a fine, to continue cutting the corn. When the sheafs are formed, everyone is bound to arrange them in stacks of eight, in *hokken*, to dry them and keep them, as much as possible, from the rain. The day for gathering in the harvest is also fixed, after common deliberation. Merry feasts and deep libations celebrate the happy day, which secures to the cultivators the recompense of their rude labours.

The land is then surrendered to common pasturage. Cows are first sent on to it, then sheep, and after that the surface of the soil is turned lightly over, and is soon covered with wild

sorrel (*rumex acetosella*), which the Dutch call *schaapsurkel*. The name is an appropriate one, for the plant is capital food for sheep, which are very fond of it. On seeing for the first time the *esschen* of Drenthe, red with the innumerable quantity of these microscopic flowers, one is at a loss to what to attribute the strange colour, for one never expects to see a weed intentionally cultivated, which is everywhere else regarded as a nuisance. At night the sheep are folded on the fields. The Dutch maintain that their country gave birth to this practice, which English agriculture has turned to such good account. Every cultivator has to furnish fence in proportion to his head of cattle. The right of common on the stubble is called *klauwengang;* and is generally in force. To keep the cattle from the *essch*, when the crops are still standing, it is surrounded by a rough wall of turf-clods bounded by a ditch (*essch-wal*). Every one is bound to work at this wall on the day fixed by the assembly; and whoever is more than half-an-hour late, after the horn has summoned the labourers to the work, has to pay fourpence fine.

The village stands at a little distance from the *essch*. The houses are well built, and kept in admirable repair. They are arranged round a large space (the *brink*); and raise their white gables under the shadow of old oaks whose majestic crests make one think of the vast forests of Teutsch, where the Germans loved to fix their dwellings.

There still exist in Holland a few forests held in common, which are relics of the old forest *marken*. The chief communal forests of the Veluwe are; the Hoogsoerenschbosch, the Uddelerheegde (492 *hectares*), the Elspeterbosch (500 *hect.*), the Gortelscherbosch (800 *hect.*), the Putterbosch (360 *hect.*), the Spielderbosch (585 *hect.*), the Speulderbosch (923 *hect.*), and the Meervelderbosch (700 *hect.*). The Vierhouterbosch (334 *hect.*) is now private property. These woods are composed of forest trees with underwood beneath. The forest trees are, for the most part, beech, the two kinds of oak of the country (*quercus robur* and *petiolatus*), and the Scotch fir. They do not let these trees obtain a very large development, but cut them after fifty or fifty-five years' growth. The young trees sow themselves; and all are carefully left which have not

attained the desired size. For new stocking they trust entirely to nature, and seldom have recourse to planting. The underwood is cut every eleven years. It is of considerable value, as it contains much oak, the bark of which sells at a good price. The inhabitants of the commune are entitled to collect dead wood, leaves and pine cones in the forest.

These forests do not give a very high revenue. The Putterbosch from 1853 to 1863 produced a total of 44,283 florins (a florin = 1*s.* 8*d.*), which makes an average of 4,428 florins, or about 12 florins the *hectare.*

A share in the Spielderbosch, about a thirtieth, produced in the last ten years an average amount of 87 fl. 20 c. in wood, and 46 fl. 33 c. in money, or a total of 133 fl. 53 c., which is hardly more than 7 fl. the *hectare.* One of these shares was sold some years ago for 2,000 fl.; but now, in consequence of the price of wood, much more is asked. The value was relatively high, even in the middle ages. There were then, probably, old oak trees in the forests. An extract from the register of the Putterbosch shows that a share in this forest was worth 100 florins in 1579; and a share in the Spielderbosch 400 florins. "*Op den 3 february 1579 is by de maalen van Putten en Spielderbosch eendragtelyk besloten en overgegeven van nu voortaan onderholden te sullen worden, dat die gemeene maalen van Putterbosch ieder hoeve holts die aen geen maelman wesende verkoft vord tot profyt der bosch aan sig te mogen holden voor een hondert gulden ad twintig stuyver het stuk, ende die maalen van Spielderbosch voor vier hondert gulden.*"—In 1864 a share in the Speulderbosch brought in 155 fl., and a share in the Elspeterbosch, 90 fl. The first share is estimated at 3,600 fl., and the second at 2,200 fl.

The oak underwood for bark (*akkermaalshout*) of ten years growth, sells at about 200 fl. the *hectare,* which makes an annual profit of 20 fl. In Drenthe and Over-Yssel, this kind of underwood after ten years sells for 500 fl. the *hectare,* which makes an annual revenue of over 50 fl.; but in these districts wood is sold dearer than in the Veluwe.

The common woods in the Veluwe are divided into parts, which are more or less numerous and bear various names.

The Gortelscherbosch property is divided into 60 parts called

Malen. According to Haasloop Werner, 6,000 trees are felled every year and divided among the co-proprietors.

The Putterbosch is divided into 53 parts (*andeelen*), 6 of which belong to the forest itself, regarded as a civil person.

The Spielderbosch contains 44 shares, called *hoeven*, 14 of which belong to the wood. The Speulderbosch contains 120 parts (*deelingen*), 58½ belonging to the forest. The Elspeterbosch comprises 54 parts, belonging to 25 co-proprietors; and the Uddelerheegde 120 parts, owned by 29 persons. The shares belonging to the forest are sold; and the price, less the expense of replanting, supervision, &c., is divided among the co-proprietors.

The co-proprietors (*maalmannen*), before taking part in the general assembly (*maalspraak*), had to pronounce an oath, the ancient formula of which is still preserved in the registers of Gortelscheboseh, near Epe. The text of this oath recalls, alike in language and spirit, the ancient traditions of Germany: *Den eedt der malen.—Ick love en sekere dat ick den bus mit al syn ankleven en regten en geregtigheden sal holt ende trouwe wesen, syn regten to scutten und bestal voer te keeren, ende niet en sal nog om vrienden nog om magen versurgen nog arglist nog om leedt dat onse bus mag schadelick wesen.—So waerlick helpe my Godt!*

At Putten they have an old register of the Putterbosch, which begins with the year 1448. It mentions older books which have been lost: it is however shewn that this forest had written customs from far back in the middle ages. De Meester, in a book entitled *Aanteekeningen omtrent een par oude veluwsche bosschen* (Arnhem, 1850), published the deed by which Folkerus granted to the abbey of Werden, in 855, conformably to the Salic and Frison laws, the wood (*saltus*) of Uunnilo, the forest (*silva*) of Hornlo, 25 parts (*scharen*) in the Putterbosch, 60 parts in the wood of Ermelo, and the forests of Burlo, Dalbonlo, Wardlo, Orclo, Legurlo, Ottarloun and Langlo.

The administrative committee of the Putterbosch consists of two *holt-rigters*, and a *gecommitteerde*. This committee, nominated by the co-proprietors (*maalmannen*), manages the forest and directs the division of its produce. In the part of

the forest destined to be cut, they make as many equal shares as there are co-proprietors, and then distribute them by lot.

The nature of the ownership of these woods has considerably exercised Dutch jurists. If it were merely common undivided property, a *communio bonorum*, the proprietors might demand partition, and put an end to the indivisibility. But they seem rather to belong to that class of civil persons, *corpora vel collegia licita*, which are governed by their own rules and institutions. The supreme court leans to this last opinion. On this ground it is held that the large pasturage, *de Hoenweerd*, near Hattem, was not mere undivided property of which partition could be demanded, but was an indivisible *universitas*. In fact, if we glance back to the spirit of ancient German institutions, we must see that they are favourable to the existence of such indivisible common property, for individual ownership of land is of relatively recent origin. In the neighbourhood of the ancient common forests there are many *tumuli*, covering large urns of clay hardened in the sun, which contain ashes and carbonized bones.

In Holland, we often come upon evidence that the towns are developed out of the *mark;* for several of them still possess common land, like the town of Thun, in Switzerland, where the drill ground is called the *Allmend.* The town of Zutphen possesses a magnificent meadow, called *Marsch en Helbergen,* 150 *hectares* in extent, on which 668 cattle were turned for pasture. The town of Genemuiden has lost the greater part of its *mark,* owing to the encroachment of the Zuider Zee. It has still a meadow, *de Greente,* on which the inhabitants have a right of common pasture for their cattle. Elburg possesses a meadow, *het Goor,* divided into 612 parts (*andeelen*), and equal to 308 *Koegras* (keep for a cow, the Swiss *kuhessen*). The towns of Genemuiden, Hattem, Deventer and Steenwyck still possess a remnant of the ancient *Allmend,* in the large pastures (*greente*) on which some of the inhabitants, descended from the old families of joint proprietors, are entitled to send a certain number of cows, by virtue of hereditary right, as in the burgh of Lauder in Scotland. It would be easy to collect many other examples on the spot.

CHAPTER XXII.

COMMON LANDS IN FRANCE.

IN Gaul as well as in Italy, during the Roman period, not only the villages, but also the towns, seem to have possessed common lands. *Plures ex municipibus, qui diversa prædia possidebant, saltum communem, ut jus compascendi haberent, mercati sunt.* (Digest, VIII. 5, 20.)

Festus, speaking of the property of the villages (*pagi, villæ*), defines the *compascua*:—*ager relictus ad pascendum communiter vicaneis.*

Isidorus (*Origines* XV. 2) gives nearly the same definition: *Ager compascuus dictus, quia divisoribus agrorum relictus est ad pascendum communiter vicaneis.*

According to Alciat, the village common lands were called *Vicanalia, ex eo quod ad pagum aliquem, seu vicum, et illius habitatores, in universum pertinerent.* Even under the empire, Agenus Urbicus, a commentator of Frontinus, speaking of these common lands, tells us that they were the object of endless usurpations on the part of the powerful: *Relicta sunt et multa loca, quæ veteranis data non sunt. Hæc variis adpellationibus per regiones nominantur: in Etruria* COMMUNALIA *nominantur; quibusdam provinciis* PROINDIVISA. *Hæc ferè pascua data sunt depascenda sed in communi; quæ multi per potentiam invaserunt.*

The German invasions do not seem to have been fatal to the collective domain; for in Germany the greater part of the soil was still common property. But in France, as in England, the feudal nobility abused the power, which the habit of carrying arms gave them, to reduce the lands of the communes in the middle ages,—and more especially in the parts of the

country where the soil attained most value. Not only did the lords claim to have the eminent domain of the communal lands and especially of the forests, which originally belonged entirely to the villages; but they also invaded the arable land, and drove out the inhabitants to re-afforest them, and enlarge their chases. To this fact the traditions refer, that exist in many provinces as to the origin of the woods with which they are covered. According to Hévin (*Questions féodales*, p. 211), "William the Bastard, Duke of Normandy, destroyed twenty-six parishes in this province, to make a forest of thirty leagues." The forest of Nantes, which stretched from Nantes to Clisson, to Machecoul and to Rincé, was likewise formed on the ruins of numerous villages, that the Duke of Retz might hunt as he went from one of his castles to the other! The Norman kings introduced the same custom in England. Ducange on this subject says:

"William the Bastard, according to the narrative of Walter Mappeus, an ancient Breton historian, took the land from God and men, and handed it over to wild beasts and to the chase, destroying thirty-six parishes and exterminating their population. According to Brompton, in the hunting domain, called the New Forest, the same prince ordered several churches and villages to be burned, their inhabitants to be driven out, and the land stocked with wild beasts. Further on, speaking of William Rufus, he talks of 'this new royal forest, called in English Ithene, for which his father, William the Bastard, had expelled the inhabitants, depopulated villages and pillaged churches, and turned an area of more than thirty miles into a forest and refuge for wild beasts'..."

The work of Championnière (*Prop. des eaux cour.*) should be referred to, for an account of how the villeins, who cultivated the soil, were despoiled of their property and their independence.

At the time when the customary law was systematized, almost all the villages were still in possession of common lands: *nullus est ferè in Gallia pagus* (Mornac, *ad Dig.* VIII. 3) *qui hujusmodi pascua communia non habeat.* In the South, all waste land was presumed to be the common property of the inhabitants: *Terræ herbidæ et incultæ, quæ a nemine reperientur occupatæ, præsumentur esse universitatis in cujus territorio sitæ sunt.*" (Championnière, *Prop. des eaux courantes*, p. 344)

In the sixteenth century, especially, when the nobility adopted habits of luxury and extravagance, they strove to appropriate the common lands. "The principal commentators of the feudal law," says Dalloz (*Jurisp. génér.*, "Commune," tit. VI. ch. 3), "Legrand, Pithóu, Imbert, Salvaing, de Sainctyon, Duluc, Fréminville, and M. Henrion de Pansey, trace the deprivation of titles, the violence and the fraud made use of to despoil the communities of their property, as far back as the time of Francis I. Many means were employed with this object. The destruction of titles was easily effected by the lords, because the records were in the hands of their officers. The titles once destroyed, the lands, to which they referred, belonged to the lord in virtue of the rule *omnia censentur moveri a domino territorii.* Sometimes even the production of a regular title was of no avail: certain customs ordained that the *tailles* and other feudal charges were paid for the right of common pasturage; and as common pasturage could always be suppressed for the sake of agriculture, its suppression was effected and the communal land was united to the lord's domain." (M. Latruffe, *Droits des Communes*, vol. I. pp. 57, 79 and 90.)

Royal ordinances also prove the existence of these abuses. One of Henry III., in April, 1567, runs: "We forbid all persons, whatever their rank or condition, to take or appropriate waste lands, which are the commonage and pasture of their subjects." The ordinance of Blois, 1575, is still more explicit: ART. 284—"We command our *procureurs* to lay information with all diligence and secrecy, against those persons who, of their own authority, have taken or made away with the letters, titles and other evidences of their subject vassals, in order to appropriate the common lands, which such vassals had previously enjoyed; or who, under pretext of agreements, have compelled such vassals to submit to the decision of such persons as seemed good to them; and we enjoin our *procureurs* to institute proceedings with all diligence, and to declare all such submissions, compromises, transactions or decisions so made to be henceforth of no effect." An ordinance of 1629, reproducing the same dispositions, shews that the abuse had not ceased.

Royalty, in its struggle with the nobility whose power it

sought to diminish, finally took the part of the communes, which neither the sovereign, nor the parliament, which represented the aristocracy, had done in England.

The ordinances of Louis XIV. in 1659 and 1669 went so far as to take the strong measure of retroactive revocation. In the preamble of the declaration of June 22, 1659, we read: "The majority of communities and villages have been induced to sell and alienate to powerful persons, such as the lords of the districts, their land and their rights of user for very inadequate sums; and in many cases such price has never been paid although there is writing to the contrary, by reason of the violence of the purchasers, who have compelled the inhabitants, under false pretences, to sign or grant away that which was lawfully due to them." The communes were, therefore, re-established in full possession of all the property, alienated within the past twenty years by any title whatsoever.

The ordinance of 1667 likewise annulled all alienations which had taken place since 1620; and authorised the communes to resume possession of their lands, on restoring the price, in many cases merely nominal, which they had received. The ordinance likewise abolished the right of "*triage*," in virtue of which the lords claimed one-third of the communal property. The preamble accused the judges and nobles of having profited by the weakness of the communes, to despoil them of their property. "To conceal these usurpations, they have made use of false debts and have abused the most regular forms of justice for the purpose."

The French Revolution, following the example of the kings, endeavoured, in the first instance, to restore to the communes the lands which the feudal nobility had usurped. It did not however understand that the collective ownership and autonomy of the commune is the only firm basis of democracy, and it wanted to cut up the communal domain into small private properties, as it did with the lands of the church and the nobility. The successive laws of April 13, 1791, April 28, 1792, and June 10, 1793, abolished the right of *triage*[1], annulled all partitions

[1] In his report to the Constituent Assembly, Merlin defined the *triage*, as "the right of the lord to take for himself the third part of the woods or fens, which have been granted, by him or his ancestors, gratuitously and in full

made in virtue of this right since the ordinance of 1669, re-established the communes in all their lands, and the rights of user of which they had been despoiled by reason of the feudal rules, and declared them in full ownership proprietors of all waste lands, unless there was an authentic deed "proving that such and such portions of their lands were acquired *à titre onéreux.*" (See Dalloz, *Jurisp. génér.*, "Commune," § cit., ch. VI.)

The first article of the law of June 10, 1793, runs:—"All communal lands generally known, throughout the Republic, under the various names of common or waste lands, *gastes, garrigues, landes, pacages, pâtis, ajoncs, bruyères, bois communs, hermes, vacants, palus, marais, marécages, montagnes,* and under any denomination whatsoever, belong in their nature to the general body of inhabitants or members of the communes, in the territory of which such communal lands are situated."

The Convention especially aimed at strengthening the unity of the state. It was instinctively opposed to the independence of the provinces and of the communes, which had its roots in the ancient system. Accordingly it never sought to preserve the communal patrimony; but thought it more

ownership to the commune on his territory." It is not known how, or on what basis, this right was established. Pithou mentions a judgment of December 3, 1552, which alludes to it. Feudal lawyers justify it, on the ground that the lords had not surrendered the entire right of enjoyment over lands, granted by them gratuitously, and that in claiming the third part in full ownership they were merely taking a part in severalty instead of their right in the common whole.—This argument ignored the principle of the irrevocability of gifts; moreover, the collective domain had originally belonged to the communes, and not to the lords. The majority of ancient jurists, it is true, maintained, that, in consequence of the German conquest, all the lands composing the territory of the fief had been originally granted to the lords; and that all other property, especially the enjoyment of common lands, was derived from their liberality. It was by means of this system that commons in England passed into the hands of the aristocracy.—Many modern jurists, Henrion, Merlin, Troplong and Dalloz held the same view for France: and the courts of justice have generally adopted it in their decisions. Some old jurists, such as Legrand, Salvaing, Imbert and more recently Proudhon (*Usuf.*, t. 6, no. 2844) and Latruffe (*Droits des communes*, t. I. p. 9) maintained, on the contrary, that the communal property is as old as the commune itself, because formerly it was indispensable to agriculture: and they prove that the conquest did not suppress it. In the law of the Burgundians especially, communal lands are several times mentioned:—*Sylvarum, montium et pascuorum unicuique pro rata suppetit esse communionem.* Lex Burg., add. I, tit. 1, c. 6.—*De sylvis quæ indivisæ forsitan residerunt, seu Gothus seu Romanus sibi eas assumpserit.* Lex Burg., tit. 54, c. 1.—There can be no doubt in fact, that "the forest, the pasturage and the field" belonged originally to the inhabitants of the village, from whom the lords took them by successive encroachments. In every case, therefore, where a suit arises between the commoners and the lord or his successors, history and right command us to pronounce in favour of the former.

advantageous to increase the number of small proprietors. This was the idea which economists of the eighteenth century had rendered popular. At the present day, everywhere, except in Switzerland, men are bent upon the destruction of the collective property of the village. By the law of June 10, 1793, the Convention decreed the division of communal lands among all the inhabitants equally. Where the partition was effected, the lands were sold at a low price, and the patrimony of all was thus considerably reduced,—a deplorable and essentially anti-democratic step. Towards the end of the empire, the law of March 20, 1813, handed over communal lands to a sinking fund. This purchased communal lands, chiefly the most productive portions, for 58,000,000 francs. The Restoration gave back to the communes what remained of their property; and since then alienations have not been very extensive[1].

Communal lands still comprise about 4,000,000 *hectares;* of which 1,500,000 *hectares* are forest, and 2,500,000 *hectares* are waste land. The departments richest in common lands are the Landes, the Hautes and Basses-Alpes, the Hautes and Basses-Pyrénées, Gironde, Isère, Creuse, Bas-Rhin, and Moselle. As to the mode of enjoyment, the "Conseils généraux" have always decided, with reason, against sale and partition; they advised leases for terms sufficiently long to encourage agricultural improvements. It is in fact the best system, after that of the Swiss *Allmend.*

In some districts the system of primitive community has left deep traces. M. le Play gives the following account of the system of cultivation in force in Champagne:—

"As in the time of the Gauls, the inhabitants often cultivate in common a wood, a marsh, or waste land. They always possess in individual ownership the territory devoted to the cultivation of cereals. This is divided into three regions of equal extent, containing nearly the same number of parcels. Each of these portions receives in turn an autumn and a spring grain, and certain herbs which spring up spontaneously when the soil lies fallow. The inhabitants generally possess parcels in each division, and they are bound by municipal rulers to follow this arrangement of crops.

1 See *Hist. des biens com. en France*, by Armand Rivière.—*De la propriété communale en France*, by Eugène Cauchy.—*Des biens com. en France*, by Jules Le Berquier. *Revue des Deux Mondes*, 15 January, 1859.

Under the system of common pasturage, a common flock of sheep receives from each inhabitant a number of heads, determined by the quantity of land which he possesses in individual ownership. The shepherd, who is a municipal official, has charge of this flock, and need not trouble himself with any boundaries; in the climate of Champagne the flock may thus during the year commencing after the harvest, uninterruptedly occupy the fallow for twelve months, the spring-grain portion for six months, and the autumn-grain portion for three months. Hence the right of common pasturage extends, on the average, over seven-twelfths of the whole territory[1]."

A trace of the ancient principle of the collective ownership of the soil was maintained in France up to the Revolution, first in the idea that all lands belonged to the sovereign, and secondly in the right of common pasture. Jurists, who defended the prerogatives of royalty against the privileges of feudalism, succeeded in establishing the principle that the king had the direct universal domain of all the lands of the kingdom. They maintained, that he is *le souverain fieffeux du royaume,* making the grant of all feudal holdings, and even the enjoyment of free-allods emanate from him. This principle, set up in the code of Marillac (Art. 383) under Louis XIII., and also in an edict of Louis XIV., in 1692, was formulated with the greatest precision in the instructions of this prince to the Dauphin (*Œuvres de Louis XIV.*, v. II. 6, 93). "All that exists within the extent of our State, of whatsoever nature it is, belongs to us by the same title. You may be well assured that kings are absolute lords, and have naturally full and free disposition of all property, whether held by ecclesiastics or laymen, to use it in everything as wise economists." Louis XIV. is here expounding a principle generally admitted by English jurists.

In France, as in Spain and all other countries, we may assert that common pasturage was a general right, not merely in the forest and on the communal waste, but even on private lands after the harvest was gathered in. To escape this burden the land had to be put "in defence," or "*en garenne*" (*garenne* coming from the German *wehr*, like *guerre* and the English *war*;—*wehren* means to defend). We see here that collective occupancy is the general primitive fact; while the putting

[1] Le Play, *L'Organisation de la Famille*, 1871, p. 23.

"*en défense*," enclosure and private enjoyment are the exceptional and relatively recent fact.

Traces of the ancient collective occupancy of the common domain are also to be found in certain dispositions of Germanic laws reproduced in the customs. Thus the law of the Burgundians (*Lex Burg.*, t. 28) allowed every one, who owned no forest, to take in that of another fallen branches, bearing no fruit. The law of the Visigoths (*Lex Visigoth.* VIII. t. 3, l. 27) authorized travellers to rest their oxen and horses in unenclosed pastures, and to abide there a day or two, and also to gather the forest boughs for the support of their beasts. The authorization granted by Charles the Bald to the Spaniards is also curious: *Liceat eis secundum antiquam consuetudinem, ubique pascua habere et ligna cædere et aquarum ductus pro suis necessitatibus, ubicumque pervenirent, nemine contradicente, juxta priscum morem semper deducere.* All ancient writers, says Championnière (*Propr. des Eaux cour.* p. 337), lay down this principle: *potest quis facere in alieno fundo quod ei prodest et domino fundi non nocet.*—Basnage at the end of the seventeenth century wrote:—"It seems that our custom of regarding as common, at certain seasons of the year, waste and uncultivated lands, is contrary to the common law inasmuch as it deprives proprietors of the free disposition of their inheritance, but public interest has prevailed over individual liberty." (*Sur l'art. 82 de la coutume de Normandie.*) In the "Custom of Nivernais," Chap. XI., art. 1, we meet with a remarkable custom which seems to have been very general in the middle ages. "Every one may cultivate the lands or vineyards of another, if not cultivated by the proprietor, without any requisition, on payment of the '*champart*,' or a portion according to the custom of the place, where the property is situated, until such time as he be forbidden by the proprietor." A commentator, after remarking that the rule was introduced for the public good, and in consequence of the negligence or incapacity of proprietors, adds this detail: "that any one who has grown 'large grain,' and manured the soil, may grow 'small grain' (that is spring crops, such as oats, &c.) the following year on the same land, which they call *suivre les fretis.* The cultivator, in this case, will not be prevented

the next year from growing 'small grain,' for the whole is, as it were, one agricultural operation spreading over the two years." This is a curious application of the fundamental principle, that property exists for the general good and not for particular interests. Gleaning too is a right over the property of another, universally recognized.

Laurière, in his commentary (anno 1710) on Art. 15, l. II. t. II. of the *Institutes* of Loysel, writes these remarkable words: "By the general law of France, inheritances are only '*en défense*,' and '*en garde*,' so long as the crops are standing, and as soon as they are gathered in, the land, by a kind of *jus gentium*, becomes common to all men, rich and poor alike. This right of common pasture is inalienable and imprescriptible, like the right of gleaning, of *grapter*, and drawing water from public rivers, which consist only in a faculty or natural liberty, and are not lost by non-user." (Edit. Dupin, v. I. 6, 251). Here are two other rules of Loysel (l. II. t. II. Art. 17): "Underwood is not to be cut for four years and a month, after which time every one is at liberty to cut it."—Art. 16. "Vineyards, gardens, and warrens are always enclosable." Davot says: "All land sown with grain is legally enclosable."—Art. 18. "Meadows are enclosable from the middle of March until All Saints' Day, or till the hay is declared to be all made and carried."—Art. 20. "Waste pastures are free between parish and parish, but the '*grasses*' pastures belong only to the commoners of the parish." "According to this rule," says Laurière, "in common pasture, there is a right of commonage between the inhabitants of neighbouring villages who can bring their beasts '*champayer* et *vainpaturer*,' on each other's lands from parish to parish (*de clocher à clocher*)." We see here a trace of the right exercised over the whole *mark*, before it was divided into parishes. "The '*grasses*' pastures are the meadows not mown, the fields and woods in the acorn time, where beasts are put to fatten." As a rule the proprietor could not put all his land "*en défense*." He might only exercise this right over a small portion of his inheritance. Thus the custom of the Boulonais, Art. 131, says: "Every one may lawfully enclose the fifth part of his fief; and by this means hold it free, at all times of the year,

and enjoy it freely to himself, his tenants or lessees. Every one may also lawfully enclose an area not exceeding one *mesure* or five *quarterons* of land whether arable or not, bordering the road or path, and by reason of the said enclosure hold it free throughout the year, provided that he makes the said enclosure to be cultivated, that he plants it and builds thereon a good dwelling-house." This is obviously the *terra salica*, the enclosure of the Russian *izba*, private property in the midst of the collective territory. Laurière gives the reason of this rule: "If all who owned lands were pleased to stop and enclose them, and to put them thus '*en défense*,' the result would be that there would be no more common pasture, and the beasts of those who had no land would perish, which would be against the common advantage, and pernicious to the State." We see here a curious application of a principle, formerly universally admitted, that the general interest prevails over private property and sets limits to it. The earlier existing and superior right of the community can alone justify such a limitation of individual right.

In obedience to the inspirations of economists, whose only aim was to increase the production of wealth, without any consideration for the still more important point of its distribution, the French Revolution abolished common pasture by the law of September 28, 1791, which says (Sect. IV., Art. 4): "The right of enclosing, or destroying the enclosures of, inheritances, is a necessary result of the right of property, and cannot be denied to any proprietor." This was not merely depriving the rural population of a hereditary right, but was also striking a fatal blow against the very basis of civil order, by ignoring the superior right of the community, and by sacrificing collective to individual interest. In Spain, the same reform, accomplished more recently, excited violent resentment in the peasants, which found vent in the recent civil war. They overthrew the enclosures, as the inhabitants of the rural districts did in England in the sixteenth century. In the majority of Spanish provinces the land became public domain after the harvest, and during all the time that it lay fallow. The proprietors, applying the principles of the civil law, have endeavoured to enclose it, and preserve for themselves the enjoyment of their in-

heritance throughout the whole of the year. The peasants endeavour to put once more in force the old collective right. In a speech, delivered May 10, 1873, and quoted by M. Cherbuliez (*Rèvue des Deux-Mondes*, 15 November, 1873), M. Silvela said to the Cortes:

"This idea of socialism is with us an inheritance of the ancient system, which gave it its letters of naturalization. In the majority of our villages the revolution is regarded as a lawful return to communistic habits, which have abided in our blood. It signifies free access to municipal property, and, at times, to private property, the destruction of enclosures, and common occupation of the fallow and of the rest after harvest. This interpretation of liberty is not the child of modern doctrines, nor of demagogues' promises, nor of the abuse of the press; it springs from memories and traditions which nothing can efface. So it is less widely spread in the great towns than in the country districts and hidden corners of our territory."

This example shews in a striking manner how, by destroying, instead of improving the practical application of the collective right to which the ancient system had still secured an important place, jurists and modern economists have, with their own hands, cast into the upturned soil of our societies the seeds of violent and revolutionary socialism.

CHAPTER XXIII.

COMMON LANDS IN BELGIUM.

In the west of Belgium, where industry and commerce have from the middle ages created populous cities, agriculture advanced rapidly and common lands disappeared; but in the sandy district of the Campine and beyond the Meuse, in the Ardennes region, the want of communication and the absence of large towns tended to preserve the ancient form of property and cultivation. In 1846, the common lands still comprised 162,896 *hectares*, of which 80,055 were in the Campine district, and 80,864 in Ardennes district. Formerly under the Spanish rule, the government promoted clearings by the grant of waste lands (1572—1586). The ordinance of Maria Theresa, of June 23, 1772, declared that the waste lands of communes and corporations were at once to be sold. It had however scarcely any effect. The law of March 25, 1847, which is still in force, authorizes the government to sell communal lands not under cultivation, whenever grants of them are demanded by individuals. This law caused the sale of 33,000 *hectares* between 1847 and 1860; and since then these alienations have been continuing. At the present time there only remains about 100,000 *hectares* of common land. In a great many charters lands are mentioned as belonging to the inhabitants of a village in common[1]; but except in the Ardennes, the lord had succeeded in usurping the eminent domain, without however destroying the inhabitants' right of user. This right, maintained to the present day, has given rise to long

[1] This point has attracted little attention from historians; but it has been well demonstrated in the learned work recently published by M. Leon Vanderkindere: *Notice sur l'origine des magistrats communaux*, 1874. Many facts here given are borrowed from him.

and intricate suits. In the documents these common lands are called in Latin *pascua communia, communio, warescalli;* in Walloon, *wareschart;* in Flemish, *hemede, opstal, warande,* which corresponds to the German word *warschaft,* the right of sharing in the *mark,* as indicated by Maurer (*Markverfassung,* p. 15). The community itself was called *communitas;* in Flemish, *meentucht;* and the co-partners, *commarcani, genossen, ganerben.* By the side of the owners of houses, *mansionarii, massuiers,* there were the *cotarii, cossati* (in Flemish, *koter, cossaeter*), who lived in a cabin, *kot,* built on another man's ground, and had no regular share in the enjoyment of the communal property.

The towns themselves preserved their communal lands for a very long time. We will quote some examples from M. Vanderkindere :—

"Antwerp has its *hemede,* 1186, 'Pascua et terræ ad communem justitiam pertinentes......quæ vulgo *hemethe* vocantur' (Mert. and Torfs, *Gesch. v. Antwerpen,* I. 31; Wauters, *Preuves,* p. 48), and also its *Opstalle* (*Brab. Yeesten, Codex,* I. p. 677; *Keure d'Anvers* of February 21, 1291).

"At Louvain, an enquiry was made, in 1323, with regard to the commonable meadows, *ghemeene veeweyde* (*Brab. Yeesten, Codex,* I. p. 764. See also *Chron. de J. de Klerk,* I. 641, in 1234, and for the *Opstalle, Brab. Yeesten,* I. p. 730, *Keure* of September 17, 1306).

"At Ypres an *Upstal* is mentioned in 1111 (Gheldof V. p. 320).

"At Ghent, the *Keure* of 1192 forbids private individuals disposing of lands *toti oppido communia,* and building upon them (Gheld. III. p. 226, § 17; cf. Gheld. II. p. 26).

"At Malines, in 1264, Walter Berthout grants to the inhabitants land, 'usu communi absque clausura hereditario jure perpetuo possidendam' (Wauters, *Preuves,* p. 212).

"There is also the case of Soignies, in 1142 (Wauters, *Preuves,* p. 19); of Montigny-sur-Sambre, in 1253 (*Ibid.* p. 182); of St Trond, in 1324 (*Cart. de St Trond,* I. p. 462), etc.[1]

[1] At Soignies, the mayor with the assembled jury of surveyors (*verejurati*) allotted to every one his share in the lands of the commune of St Vincent:—the *cachepoul* carries the rope, the Germanic *reeb,* used for the measurement.

"We must guard against the idea that these communal lands were only the remnant of a primitive state of things, to which hardly any importance was attached. The *Keure de Grammont*, 1068 (Warnkönig II. 2°, 163), will shew the contrary. This town, as we know, was founded by Baldwin VI. on an *allod*, which had belonged to a certain Gerard; but this land being insufficient, the Count granted the town as a fief to the lord of Boulaere, and he, in exchange, provided the new city with the pasturage that it required: 'In recompensationem feudi prænominati, Balduino comitis ad usus Geraldimontensium Buzemont, sicut ipse possedit, et Cortelake et pasturam ......(all the pastures are here enumerated)......addidit insuper quod quibuscumque aquis et pascuis homines sui uterentur, liceret Geraldimontensibus uti communiter.'

"Similarly, at Douay, in 1241 (Warnk. II. 2°, p. 261), the Count of Flanders recognized the right of the burgesses to the pasture and marsh land surrounding the town; they are entitled to take whatever is necessary for their personal use, without any charge: '*car ils n'estoient tenus anchiennement en nulle cose pour chou.*' The Count, moreover, engages not to give any one any part whatsoever of those pastures, over which the inhabitants of Douay have an absolute right, nor to allow their enclosure."

In a Soignies document, of the date 1248 A.D., we learn that, in case of a transfer of property, the land was surrendered into the hands of the mayor, who alone could invest the new occupant. "All the lands of the commune must be conveyed into his hands for him '*desireter et aireter*[1].'"

At Louvain the *adhérance* and *desheritance* of allodial lands was effected by the mayor in presence of the aldermen, *tanquam allodii consortes*, assisted by two of the fellow allodial proprietors, with symbolical ceremonies, *cum cespite et ramo*. The alienor began by consigning (*supportare*) the property into the hands of the mayor; then the two allodial "peers" pronounced the adjudication to the new purchaser, to whom the mayor surrendered the property "by branch and clod[2]." This

[1] Wauters: *Preuves*, p. 172.
[2] See *La propriété foncière au XVe Siècle dans le quartier de Louvain*, par E. Poullet, 1866.

is evidently a relic of the primitive period, when the chief of the commune presided over the partition and distributed to each member his share in the communal domain. The co-occupants are often called "*parcheniers*," or "*parceniers*," as having a *part* or share in the lands of the commune. In the coal district we find collective property applied to coal-mines[1], of which the "*parceniers*" have the use.

We have no ancient documents to shew how private ownership of land was developed in Belgium, but the appearance of certain villages gives us some insight into the subject. The houses are arranged in a line along the road. Behind each house stretches a long strip of ground, which is nothing but the *terra salica*,—the appendage of the *izba* in Russia, which has been gradually enlarged at the expense of the common *mark*[2]. The best preserved type of this archaic form is the village of Staphorst, to the north of Zwolle in Over-Yssel. In Flanders, when industry developed and the population increased, intensive agriculture was introduced, and with it private property. When a man had improved and manured land, he strove to retain it, and such improvements in Flanders date from the earliest times of the Middle Ages[3]. The town of Termonde probably once had a common *mark*, for it possessed large herds of swine, sheep and goats. The ancient regulations forbid the inhabitants to let their sows run about in the streets of the town; the young pigs may be sent out in herds, under the care of the herdsman. Whoever maims one accidentally pays a fine[4].

There was to be found quite lately at Ghent, on a pasturage which had evidently been a *mark*, a right of user altogether exceptional, inasmuch as the commoners had quitted the locality where the right had been established. This pasturage was called *Hernisse*, and had an area of about 50 *hectares*. Regu-

[1] M. Gachard quotes a regulation of 1248, as to the extraction of the coal in the communes of St Guislain, Dour, Quaregnon, Boussu, &c. "Et en tous ces ovrages chi devant nommés ne puet-on foir carbon devens les 4 ans deseure escris, en toute l'œuvre et le justice S. Gillain et ses parceniers ka xx puits, en le justice et l'uevre Sainte Wauldruth ka xx puits, &c."

[2] Meitzen: *Ueber Bildung von Dörfern* in the *Verhandlungen der Berliner Gesellschaft für Anthropologie*, 1872, p. 134.

[3] See the author's *Economie rurale de la Belgique*.

[4] See *Ordonnances de Police* for the town of Termonde, published by authority of the commune (1868).

lations issued by the bailiffs, auditors and aldermen, *der herrlykheid, roede ende vierschaere van Sinte Baefs*, shew that the meadows were formerly subject to a right of a peculiar nature, recalling that of the Swiss *Allmends*. The right of depasturing beasts at certain periods, alternately on the meadows of the "great Hernisse" and "little Hernisse," was recognized by a regulation of 1572, solely for the benefit of certain persons who were inhabitants of the commune of Saint-Bavon in 1578, when the territory of Saint-Bavon was comprised in the new circle of fortifications of Ghent, though still retaining a distinct magistracy. To keep up the number originally fixed, well-to-do inhabitants of the magistracy of Saint-Bavon might be allowed to fill vacancies, if they could shew each step of their descent through inhabitants of Saint-Bavon from ancestors who were inhabitants in 1578, and who at that date possessed the qualifications of proprietors. In order to the strict observation of this rule, it was ordained that persons qualified should be entered, by the *Hernismeesters* (Masters of the Hernisse), in a special register, with a declaration on oath of their birth and parentage.

The nomination of *Hernismeesters* was effected annually by an election consisting of two steps. The inhabitants of Saint-Bavon had to choose four electors. These drew up a list of eight of the principal persons, out of whom the bailiff, the *écoutète* and aldermen, selected the four *Hernismeesters*. These functionaries took oath on entering upon their office. No horned cattle were allowed on the two Hernisses, unless they had calved since the first of January. The right of a descendant of such as were inhabitants of Saint-Bavon in 1578 to depasture a cow on the Hernisse was inalienable. If the descendant of an inhabitant of Saint-Bavon (a *vreye Bavenaer*) returned to the territory of Saint-Bavon, and dwelt in a free house situated in Saint-Bavon (*in een vry huis staende op Sint-Baefs*), he might send one cow on to the common pasture (Art. 8 of the regulation of May 7, 1707). Finally, to fill the office of *Hernismeester*, it was necessary to be entitled in one's own right to send a cow on to the Hernisse, that is to be one's self a *vreye Bavenaer*[1]. In a recent suit the right of enjoyment of the Hernisse has not

[1] *Belgique judiciaire*, 1869, p. 761.

been recognized by the tribunals, because the civil code allows no right of a similar nature.

Merlin, in his *Répertoire*, under the word *Bouillon*, mentioning what Cæsar says of the periodic partition of lands among the Germans, tells us, "This custom had been preserved in the duchy of Bouillon, so that the majority of the inhabitants even now hold very little land in private ownership. The sovereign possesses a considerable extent of land which entirely surrounds the duchy. This land is called the *Ban-l'évêque*, because the Bishops of Liége had the enjoyment of it so long as they retained the duchy of Bouillon."

"This *Ban*, though forming part of the domain, is not cultivated or enclosed by the prince. The commissaries-general of his council distribute every year to the inhabitants of each village, a portion of the *Ban-l'Evêque* proportioned to the condition of each family. This distribution is altered every year. They give every inhabitant a different portion every year from that which he had the previous year. The distributions are called *virées*, because they change each year. There are also *virées à bois*, or distributions of woods.

"The inhabitants are not owners of the lands and woods, which are distributed to them in the *virées:* they have only the right of cultivation and user for the period for which they are granted. The lands which are so distributed to them do not yield two years together. They are cultivated for one year, and then left to rest for sixteen or seventeen, or sometimes even eighteen years, these lands not having the manure necessary for their fertilization."

In certain communes of the Ardennes these *virées* are still in use at the present time. A portion of the communal territory is divided into a number of parts equal to the number of years necessary to allow the herbage removed by the *écobuage* to grow again. One of these portions is taken each year, and divided into as many parcels as there are households in the commune. These parcels are distributed by lot among the commoners, and assigned temporarily to those to whom they fall. Every one then removes the herbage from the surface. It is left to dry in the sun, and then is burned; and the ashes are spread on the ground. This dressing enables a crop of rye to be obtained. The following year parcels are assigned by lot in a second portion; and the same operation is carried on. But while rye is sown on the second parcel, the commoner may plant potatoes on his first parcel. The next

year a new parcel is obtained by lot for the rye-crop, while the second parcel, which has yielded potatoes, is sown with broom. By this method every household has always three parcels bearing some crop: one sown with rye, a second bearing potatoes, and a third giving broom. This last plant is used by way of litter for the cattle in its first year's growth. After that it is left to grow for firewood. After the broom is cut the herbage re-appears on the surface, and then furze; and at the end of eighteen or twenty years it is again subjected to *essartage.* The whole of the communal territory is thus cultivated in turn, being allotted in private, though temporary, ownership.

This is exactly the system of agriculture described by Tacitus: "They change their field every year, and there is always land in reserve," and by Cæsar, *de Bello Gallico*, VI. 22: "No one has enclosed fields or land in private ownership; but the magistrates and chiefs assign each year lands in such places and in such quantity as they think fit to the *gentes* and families living in community. The next year the magistrates make them remove elsewhere."

The portion of the communal land that is not allotted, and that which has returned to fallow, serves as common pasturage for the commoners' cattle. The produce of the communal woods is also divided among them.

The following rules generally govern the distribution of the right of user.

Every year a list is drawn up of persons who have lived in the commune for a year, and had a separate hearth or household. This is called the list of the *affouagers.* The division of the woods, and the distribution of broom, litter, &c., is effected in equal lots among the *affouagers,* without regard to the importance of their families, or to their requirements or necessities.

Sometimes the communes divide the temporary enjoyment of the communal lands among the inhabitants. For this purpose equal parcels are formed, and distributed by way of lot among the *affouagers.*

Sometimes the inhabitants have merely the right of making the *essartage* and afterwards sowing broom in the *sarts;* they have to restore the land to the disposition of the commune as

soon as they have gathered in the broom. In this case the period of enjoyment is three or four years. Sometimes these lands are given over to the inhabitants for fifteen or twenty years. They pay the commune an annual rent; and at the expiration of the term the commune resumes possession of the lands as they then are.

The inhabitants have the right of turning on to the common pasture all their cattle, whatever the number, and without regard to the time when they came into possession of them. The owner of a large herd therefore derives more profit from the common pasture than the inhabitant who has few cattle or none at all; but hitherto there has been no attempt to alter this rule. It follows that the principal farmers, who generally are charged with the administration of the commune, have a great interest in preserving the common pasturage. Accordingly the communes are very much opposed to the alienation of the waste, which the law authorizes. In more than one instance, for fear of such alienation at the instance of a large neighbouring proprietor, a commune has been ready to divide among its inhabitants the domain which it supposed to be coveted. Thus, quite recently, in the village of Ville-du-Bois, the inhabitants, for fear of legal dispossession, allotted about 50 *hectares* in full ownership. The allotment was effected in this way. Equal parcels, of very moderate value, were formed; these were distributed by lot among the *affouagers*. Any parcels that were declined were put up for public sale, but *affouagers* alone had the right to bid for them.

In 1862 Vielsalm sold in the same way a large common waste; and a clause was inserted in the conditions to the effect that for five years the purchasers should not have the right of re-selling. A similar sale took place recently (1873) in the commune of Lierneux.

In certain communes—those, for instance, in the neighbourhood of Ciney, at Braibant, Sovet, and Emptinne—communal lands are found divided for a long term. They are cultivated, like the Swiss *Allmends*, in a permanent manner, and even better than the large farms in the neighbourhood. At Braibant every "fire," or family, has the enjoyment of about a *hectare* of good land. The partition is effected in equal portions

among all the "fires" of the commune,—the greater part for terms of thirty years, the remainder for nine years. Formerly these lands were *sarts* cultivated every eighteen years; but now they are cultivated without any fallow, although the tenant-farmers still let a portion of their land lie idle. The parcels thus allotted are well manured, because the occupier is sure of retaining a long enjoyment of them, and also because the terms of allotment impose precise obligations in this respect. Whoever does not put on the prescribed quantity of lime and manure loses his parcel, which is granted or let to the oldest commoners, if there are any who have not yet received parcels. Lands distributed for nine years are not so well cultivated, because the occupier neglects them as the end of his occupancy draws near. This instance, which confirms that of the Swiss *Allmend*, shews that the Russian system, which is subject to so many attacks, may lead to good results, when it is applied in accordance with the prescriptions of well ordered agrarian economy. It is moreover an undoubted fact, that in the poorer villages of Luxemburg the least well-to-do of the inhabitants, who receive their fuel from the commune and have the right of depasturing their beasts on its meadows, have much less ground of complaint than those of the richer Flemish villages. The position of the Flemish labourers is also better when they have a small field for the cultivation of potatoes or rye.

CHAPTER XXIV.

THE STATE AS LANDOWNER, AND PROPERTY IN INDIA.

It is well known that in Mohammedan states the sovereign is regarded as owner of the soil, by virtue of the principles of the Koran. But it is particularly interesting to see how a European government, on becoming master of an immense territory where Mussulman principles were in force, took advantage of this right of property. We have already seen the material advantage derived by Holland from the application of this system to its colony of Java. Let us now examine how England solved the problem in India[1].

India has been so completely subject to the Mohammedans, who twice united all its provinces in a single empire, that the Mussulman principle of the state's proprietorship was universally recognised there. In virtue of this right the sovereign deducted a certain portion of the produce. This has been held to be a mere tax; but when the tax rises so high as to absorb nearly the whole produce and to leave the cultivators the bare means of subsistence, it is obviously an actual rent that is paid; and if it is the State that receives such a tax, it may be considered as the true proprietor. Before the arrival of the English this rent consisted of a part of the produce, varying between one half and one quarter, and was gathered by collectors, who retained a certain proportion as salary, or else by farmers general who paid

[1] See especially the excellent treatise of Land Tenure in India, published by Sir George Campbell in the volume of the Cobden Club, quoted several times before, *Systems of Land Tenure in Various Countries*.

See also *Ancient Tenures and Modern Land-legislation in British India*, by Henry Dix Hutton, 1870.

the Government a fixed sum. The soil was rarely sold, because the rent, which alone could make it of value, was taken by the State.

The idea of an absolute ownership of the soil, giving the right of disposing of it at will, was never entertained. "We are too apt to forget," says Sir G. Campbell, "that property in land as a transferable mercantile commodity absolutely owned and passing from hand like any chattel, is not an ancient institution but a modern development, reached only in a few very advanced countries. In the greater part of the world the right of cultivating particular portions of the earth is rather a privilege than a property; a privilege first of a whole people, then of a particular tribe or a particular village community, and finally of particular individuals of the community. In this last stage the land is partitioned off to these individuals as a matter of mutual convenience, but not in unconditional property; it long remains subject to certain conditions and to reversionary interests of the community, which prevent its uncontrolled alienation, and attach to it certain common rights and common burdens[1]."

In five great divisions of their vast empire, with a population of two hundred and ninety millions, the English have introduced five different systems for the organization of landed property. There is therefore a wide field for the study of social forms.

1. In the Punjab, the State has respected the rights of the small cultivators, whom it considers as proprietors; and it has treated for the revenue or rent with village communities as collective corporations.

2. In Bengal, it has attributed the proprietorship to Zemindars, imposing certain guarantees in favour of the occupiers.

3. In Oudh, it regarded the Taluqdárs as proprietors, without sufficient reservation in the interest of the occupiers.

4. In the North-west and Central Provinces there are properties of medium extent, the peasants, or *ryots*, having fixity of tenure at a fair rent.

5. In Madras and Bombay there are no persons intermediate between the cultivators, or *ryots*, and the State. The

[1] *Systems of Land Tenure, &c.*, p. 151.

ryots have fixity of tenure, at a rent fixed for the term of each settlement[1].

We will examine the several systems more closely.

1. In the Punjab, the villagers have preserved a strong constitution, almost entire independence and a perfectly republican communal autonomy. Collective ownership of the soil with periodic partition has disappeared; but there remains extensive common pasturage; and nearly all the families have some land which returns to the community on their ceasing to cultivate it. The community also exercises a right of control over its members in all that concerns the cultivation of their lands.

The village consists of an association of free men, descended, according to tradition, from a common ancestor; it is therefore strictly speaking a clan. Each inhabitant has a share of the soil expressed in "ploughs." A "plough" is no fixed quantity, but simply a portion: one or two hundredth parts of the territory. Although all are proprietors there is not perfect equality; some have several "ploughs," others only half a "plough"; these shares are evidently derived from the lots formerly assigned in the days of periodic allotment. The community is governed by a council of elders, who retain power so long as they preserve the confidence of their fellow-villagers. This constitution, which is essentially democratic, still bears the stamp of its Indo-Germanic origin. It has entirely escaped the influence of the Brahminic system of caste as also that of the feudal system. It is precisely similar to the Swiss commune, which has likewise preserved the liberty and equality of the ancient Germanic communities. The State never interferes in the internal organization of the village. "The settlement is made with the communities, each village undertaking the payment, through its representative council of elders, of the revenue assessed upon it, which again is distributed upon the individual members, in proportion to the land held and cultivated by them[2]." The land cannot be seized and sold in satisfaction of debts; and, in case of alienation, the village has a *droit de retrait*, or right of pre-emption.

This system, put into execution by Lord Lawrence, has produced excellent results. The Government easily collects the

[1] *Systems of Land Tenure*, p. 229. [2] Ibid. p. 195.

rent due to it; small properties have been maintained; and primitive liberty and equality respected. It is allowed on all sides that the Punjab is alike the most prosperous province of India and the one most devoted to the English, to whom it gave the most active assistance in the time of the Mutiny.

2. In Bengal an entirely different system has been introduced. When the English occupied the country they found a superior class above the cultivators,—the *Zemindars*, who collected the rent for the State, retaining a certain proportion. These functions were transmitted hereditarily. The Zemindars, therefore, resembled the holders of a fief, in the theory of the feudal system. They were either tributary rajahs or princes, who had been reduced to the position of subjects, collectors or farmers of the revenue, native chiefs, or adventurers and bandits, who had grown powerful in a district, for which they paid the revenue demanded. "To our ideas there is a wide gulf between a robber and a landlord, but not so in a native view. It is wonderful how much, in times such as those of the last century, the robber, the rajah, and the Zemindar run into one another[1]."

The English considered the Zemindars as proprietors, not from any misunderstanding as to the nature of their rights, as has often been asserted, but because they hoped by this means to collect the revenue more regularly, at the same time that they created a superior class who might improve the cultivation, and help to enrich the country, as the English aristocracy have done. They were, however, disappointed in their hopes. The Zemindars are content with taking the revenue, and do nothing for the advancement of agriculture. But, on the other hand, they do not attempt to wrest from the cultivator the whole rent that they might obtain. Besides, the ryot has more protection against their demands than the tenant farmer in Europe. Zemindars can only claim the rent established by the *pergunnah* or custom. If any dispute arose regarding the customary rate, "the question was to be *determined in the Dewany-Adawlut* (*Civil Court*) *of the Zillah in which the lands were situated, according to the rates established in the pergunnah for lands of the same description and quality as those respecting which the dispute arose*[2]." The Zemindar cannot

[1] *Systems of Land Tenure*, p. 168. [2] Ibid. p. 173.

cancel the *pottah* (or specification of rent) so long as the rent is paid. Moreover, the State reserved a right of interference on behalf of the inferior holders. According to the existing law—"The Governor-General in Council will, whenever he may deem it proper, enact such regulations as he may think necessary for the protection of the dependent taluqdàrs, ryots, and other cultivators of the soil[1]." This is a curious instance of State interference in the relations of proprietor and tenant.

The Government also granted the Zemindars the property in all the waste lands of their domain, except those situated in districts not yet populated. The State demand was fixed at ten-elevenths of the rent received by the Zemindars.

In Bengal proper, the Zemindars have granted "sub-leases in perpetuity, for a consideration[2]." Thus the right of the occupier is become a sort of sub-ownership, self-existent and capable of assignment, like the Irish *tenant-right*, the Portuguese *aforamento*, the Italian *livello*, or the hereditary lease of Groningen.

The absence of regular titles in public registers or copies from them, and the incessant suits arising from it, are the curse of landed property in Bengal as in England. New rules have recently been introduced to guarantee the rights of the ryots (Act x. of 1859). If the ryot can prove that his rent has not been changed for twenty years, it shall be presumed that the land has been held at the same rate from the time of the permanent settlement (which entitles him to hold at the same rent for ever), *unless the Zemindar shews to the contrary.* "Tenants having a right of occupancy are liable to enhancement of rent on the following grounds, and on these only:—

"That the land is found by measurement to be in excess of the quantity paid for.

"That the rate of rent is below the prevailing rates paid by the same class of ryots for similar lands in the places adjacent.

"That the value of the produce, or the productive powers of the land, have been increased otherwise than by the agency or at the expense of the ryot."

In a famous suit called "The Great Rent Case," on the subject of indigo cultivation, the following principles were applied by the judges. The cultivator was allowed to sell his

[1] *Systems of Land Tenure*, p. 174. [2] Ibid. p. 179.

indigo at an advanced rate to the proprietor; while the latter was enabled to raise the rent, which he would not be permitted to do unless the price of the produce paid to the tenant had increased. This last rule is remarkable as taking from the proprietors the benefit of any increase in value which is not the result of their own industry. This will be recognised as the principle which Stuart Mill wanted to apply in England, and which aroused such violent opposition. It was not, however, a novelty, as the State and the Judges were applying it in India.

3. In Oudh, during the period of anarchy preceding the annexation, the Taluqdars or old tribal chiefs who had become feudal lords and collectors of taxes like the Zemindars, usurped a quasi-independent right of property over two-thirds of the soil of the principality. In 1855, after the annexation, the Governor-General ordered the authorities to treat directly with the village-communities or the inferior zemindars, without recognizing any rights of the Taluqdars or other middlemen[1]. The Taluqdars, whose income was greatly reduced by this measure, rushed into the mutiny which broke out in 1857; and the ryots, ignorant of what was being done for them, followed the example of their lords. After the fall of Lucknow, the Governor-General, Lord Canning, issued a proclamation, which confiscated to the benefit of the Government the property in the whole soil of Oudh. But this measure was not put into execution, and its only effect was to give to the Taluqdars a right of property, which they had not before. "It became the means," says the Hon. John Strachey, "of rewarding and

[1] The Order in Council said:—"It must be borne in mind as a leading principle, that the desire and intention of the Government is to deal with the actual occupants of the soil, that is with village Zemindars, or with the proprietary coparcenaries which are believed to exist in Oudh, and not to suffer the interposition of middlemen, as Taluqdars, farmers of the revenue or such like..."

Lord Lytton, in a speech delivered in the sitting of the Grand Council of October 9, 1876, did this work the honour to notice it at length, stigmatizing, however, as incorrect what in the previous edition the author had written concerning Oudh. The author had, in fact, omitted to take account of certain legislative dispositions; but several highly competent authorities, whom he consulted, and also an Indian paper of considerable repute, *The Pioneer Mail*, Nov. 4, 1876 (*Optimism in High Places*), are of opinion, that his criticism of the agrarian policy pursued by the Government in Oudh, was in the main correct.—In order to avoid all charge of inaccuracy, the author now principally makes use of official documents, which he owes to the graceful kindness of Lord Lytton himself, and particularly of the excellent account given by the Hon. John Strachey, Chief Commissioner of Oudh, in the General Council (July 17, 1869), when proposing *the Oudh Taluqdars' Bill*.

benefitting the very men, the Taluqdars, whom Lord Canning had originally desired to punish, and of placing them in a far better position than that which they held under the native government." Sir Robert Montgomery, the Chief Commissioner, gained the submission of the Taluqdars by granting them the following advantages, which were confirmed to them by Lord Canning in October 1858: the Taluqdar, "instead of holding his estate, as he formerly did, subject to the conditions of the Hindu or Mohammedan or local law, according to which his power of disposing of ancestral property is very limited, now possesses an absolute power of disposing of his estate." He owes to the state one half of the gross-rental, the rate of which is to be fixed every twenty or thirty years. With regard to the ryots, the Governor-General expressed a wish "that the Taluqdar settlement may be so framed as to secure the village occupants from extortion" (*Orders in Council*, Oct. 30, 1858), and he reserved to himself the power necessary "to uphold their rights in the soil in subordination to the Taluqdars." It was for the cultivators, however, to prove their right of occupation, which they were as incapable of doing, as the Taluqdars were of shewing their right to expel them. Mr Strachey did not hesitate to condemn, in full Council General, the agrarian regulations established at the time. "In my opinion," he said, "it often bears very hardly upon the ancient proprietors of the soil, whose rights had been overborne by the Taluqdars. Practically the Taluqdars have gained everything, and the holders of subordinate rights of property have gained nothing."

Act XXVI. of 1866 was passed, it is true, "for the better determination of certain claims of subordinate proprietors in Oudh;" but in order that these subordinate proprietors might enjoy the advantage of paying only a fixed rent, they had to produce proofs, which was a matter of great difficulty to them. About a tenth part of the cultivators found themselves thus protected in their occupancy by the law. Nevertheless, according to Art. 32, of the Rent Act of 1868, the rent may be increased by the court on the demand of the Taluqdar, if the rent paid is less than that generally paid in the district by persons of the same class, or if it is 12½ per cent. less than that paid by tenants with no right of occupancy. With regard to other persons, their position is

likewise regulated by the same Rent Act. Article 35 of this Act says: "The court shall in no case enquire into the propriety of the rate payable by a tenant not having a right of occupancy. The rent payable by such tenant for any land in his occupation shall be such amount as may be agreed upon between him and the landlord; or if no such agreement has been made, such amount as was payable for the land in the last preceding year." The cultivator, therefore, is obviously transformed into a tenant at will, and the rent which he has to pay is subject to the law of competition, which, as Mr Strachey remarks, in a country like India leads to the most unfortunate consequences. The only protection granted to him by the Rent Act is that he can demand from the proprietor a lease stipulating the condition of tenure (Art. 7); that eviction must be regularly notified to him (Arts. 37 and 43); and that he is entitled to compensation for permanent improvements of such a nature as to increase the letting value of the land (Arts. 23 and 24). Hence something very similar to the English agrarian system has been established in Oudh, but it does not produce the same results, because the Taluqdars do not apply a portion of their revenues, as many English landlords do, to the improvement of the soil and the means of cultivating it. The cultivators have been deprived of the security of possession afforded them by custom, and subjected to the extortion of a rent regulated by competition; and the limited quasi-proprietorship of the Taluqdars has been transformed into an absolute right. The better course, according to Mr Thornton and Sir George Campbell, would, on the contrary, have been to maintain, with all necessary precautions, the system inaugurated after the annexation,—that is to say, to keep the property in the hands of the small Zemindars and the village inhabitants, to allow a fixed revenue to the Taluqdars, and to reserve for the State all increase of rent. Mr Thornton shews decisively that the best tax is that which the State levies, in its capacity as sole eminent proprietor of the soil. (*Indian Public Works*, p. 218.)

4. In the North-West Provinces, a more equitable system was introduced by the regulation of 1822, carried out for the most part by Mr Thomason. It was decided that the rights of all proprietors, great and small, and even those of the occupiers,

should be recognized and registered. The government claimed two-thirds of the rent, the amount of which was to be subject to revision every thirty years. As for the ryots, they "hardly understood the distinction between hereditary occupancy and tenancy-at-will, the question of eviction never having been raised." All those, who had been in uninterrupted possession for twelve years, were considered as having a right of hereditary occupancy, at a fair rent. But the Act x. of 1859 recognized in the Zemindars the right of increasing the rent. Fortunately, they have taken little advantage of it. In fine, in spite of many errors in the regulation of rights generally of a very vague nature, agriculture has flourished, land has acquired a high value, and the population is prosperous and contented.

5. In the Central Provinces, the revenue was collected by farmers, and the sum to be paid by the ryots was fixed by State officials. But the authorities, wishing to introduce private property absolutely, recognized these farmers as hereditary proprietors, allowing them the difference between the rent paid by the ryots and the revenue fixed by government, and whatever else they might derive from the bringing into cultivation of the waste lands assigned to each village. The State reserves the right of increasing the revenue, and of retaining the waste lands not comprised in the village domain. Under this system, the rights of the cultivators are guaranteed; but the State would have done better if it had regarded the Zemindars as collectors of revenue. It would have avoided, as Sir George Campbell points out, the complications arising from the division of inheritances; it would have had submissive and active functionaries, in the place of rapacious and insubordinate proprietors. The security afforded by a direct tenure under government is the best stimulus to agricultural improvements on the part of the cultivators. But now with no compensation for the sacrifice, the State is despoiled of a portion of its rights, which would have become very important in the future, and this for the sake of an idle class doing nothing to increase the productiveness of the soil.

6. In the provinces of Madras and Bombay, the principle of State proprietorship has been respected in its entirety. There has been no one intermediate between the cultivators and the

Government. The right of each cultivator is clearly defined: and what he has to pay is either a portion of the produce, varying with the nature of the crop and commutable for a money-payment, or a sum of money fixed for a term of thirty years. The State takes the rent directly from each holder of lands, without the intermediate joint responsibility of the village[1], or the intervention of Zemindars, who have here disappeared. This agrarian organization is known as the "ryotwar system." The State being the sole proprietor, all uncultivated land is regarded as belonging to it, and grants are made to such persons as wish to bring it into cultivation.

Although the rent demanded by the State was too high,—hardly leaving the cultivators the means of subsistence,—the ryotwar system, as every one allows, has led to excellent results[2]. The cultivator is not at the mercy of a rapacious proprietor. The rent which he has to pay is determined by the price of commodities, and he has an absolute security for thirty years together, whereas in Europe the tenant is ordinarily liable to an increase of rent every six or nine years.

In an article published[3] by Mr Mill, combating the project of compelling all corporations to sell their landed property, this great economist extolled the system, in which, as in India or Java, the State retains possession of the soil. The rent taken by it[4] might be made high enough to replace every other

[1] ["The most curious proof that the natives do not necessarily prefer the separate to the joint system, is found in the fact, published in some of the official papers of the Madras Presidency, that in that country villages were found which for half a century had submitted to the farce of a Government assessment on each individual, but had year by year lumped the individual assessments together, and redivided the total in their own way among the members of the community."—*Systems of Land Tenure*, p. 197, note.]

[2] A remarkable increase of population and property has been shewn: thus, in the district of Bhimturi, between 1841 and 1871, the population increased 39½ per cent, the number of ploughs 22½ per cent, and the number of oxen 19 per cent. In the Chandur district, the population increased 100 per cent; the number of oxen from 8602 to 13,988. See Markham, *Statement of Moral and Material Progress of India for* 1873, p. 27; and Thornton, *Public Works in India*, p. 209.

[3] In *The Examiner*, of January 11, 1873.

[4] The amount of rent collected by the State in India amounts to £21,000,000 out of a total revenue of £50,000,000; and, as Sir Richard Temple said in his statement on the Indian budget, this revenue is constantly increasing, notwithstanding the reductions granted from time to time. *Indian Financial Statement*, 1873—4.—In 1793, the revenue of the provinces of Bengal, Behar and Orissa was about £3,400,000, of which £300,000 was retained by the Zemindars. Lord Cornwallis having by the permanent settlement surrendered this rent to

impost, and then the inhabitants would, in fact, cease to pay any contribution. It is easy to see the increased facility for all kinds of industrial and commercial transactions which would result from the entire suppression of all taxes. Circumstances would be easier, at the same time as salaries would be lower, because they would no longer be subject to the deduction imposed by existing taxation. The system would present no difficulty in practice. The whole economic organization would continue to operate as at present, under the action of the law of supply and demand. The only difference would be the raising of the land-tax to the level of the present rent, or of a fair rent determined by the price of produce, and leaving a sufficient margin to recompense the cultivators for their labour, and to allow them to reap the benefit of improvements effected by them. Just as under the Ryotwar system, the tenants of the State would hold in perpetuity, at a fair rental.

The nationalization of land, thus understood, would not entail any radical modification of the existing organization of society. It would merely allow the application to purposes of the State, the provinces or communes, of the net produce of the soil, which now serves to support a certain number of individuals who render no service in return for what they receive.

Mr Fawcett[1] is of opinion that the effect of a system replacing the State in possession of the soil would be to weaken the motive of personal interest, and so to put an end to all attempts at improvement. It is easily shewn that this objection is not well founded; for, in a district belonging to an English nobleman and passing with the title, the conditions are precisely the same as they would be if the State were the real proprietor and the nobleman only a collector of the rent. In the province of Bengal the state has placed the soil in the hands of large proprietors; in Bombay, it has recognised no rights in the Zemindars. The stimulus to labour has not been weakened in the latter province any more than in the former. On the contrary, the soil is better cultivated under the ryotwar system than

the Zemindars, the latter are now receiving some seven or eight millions sterling, while the State to which this increase ought to accrue, has hardly made any increase in the land-tax.—See Thornton, *Indian Public Works*, p. 222.

[1] See *Fortnightly Review*, December 1872. *The Nationalization of the Land*, by H. Fawcett, M.P.

under that of the Zemindarate. When the "nationalization" of land merely signifies that the State reserves to itself the rent in the form of a land tax, without modifying the laws which regulate the division of capital and the distribution of profits, I confess I can see no serious objection to it as regards economic laws.

Mr Fawcett also asserts that the purchase of the soil would be disastrous as a financial operation, because the State would pay at least 3½ per cent. for the money it would have to borrow, while it would only receive 2½ per cent. as revenue from the land. The observation is correct. But, admitting that the State should be placed in possession of the soil so as to receive the rent of it as revenue, this should not be effected by way of purchase. To attain its object gradually and without occasioning the least disturbance, all that is necessary is to limit collateral succession to the degree of first cousin; and to have a tax on successions generally, which should be set aside for the purpose of buying up landed property as it comes into the market. As for difficulties of administration, they would not exist. The right of persons occupying land would be transformed into a lease; and the receivers of revenue would collect the rent in place of the existing tax. In that part of the West End of London, which belongs to the Duke of Westminster, the property is managed very much in this way. Suppose the Duke's agents nominated by the Crown, and handing over their receipts to the national exchequer, and there would be no appreciable change.

England, the country where property, tied up in the hands of a few great families, is as little at the disposal of those who cultivate it as if it belonged to the State, is at the same time the country where the motive of industrial activity is most developed. It cannot, therefore, be maintained, in the face of these facts, that the nationalization of the land would weaken this motive. The system would simply be the application of the theory of the physiocrats, a single tax assessed on the soil.

An association has been formed in Australia, at Melbourne, under the name of the Land Tenure Reform League of Victoria, the object of which is to induce the State to cease from selling

public lands, and only to grant leases. Mr Mill followed the labours of this league with the greatest sympathy[1]. The following were the principles on which it was started, and the object which it had in view, as given in the circular of January 5, 1872.

PRINCIPLES.

1. "The revolutions that impend over society are not now from ambition and rapacity; from impatience of one or another form of government; but from new modes of thinking, which shall recompense society after a new order, which shall animate labour by love and science; which shall destroy the value of many kinds of property, and replace all property within the dominion of reason and equity." (Emerson.)

2. "The essential principle of property being to assure to all persons what they have produced by their labour, and accumulated by their abstinence, the principle cannot apply to what is not the produce of labour, the raw material of the earth." (Mill.)

3. The land is the inalienable property of the inhabitants of every country throughout all generations.

4. "No consideration ought to be paramount to that of making the land available in the highest degree for the production of food and the employment of industry."

5. Selling the fee-simple of the land is a political misdemeanour, as opposed to justice and reason, as it has proved injurious to the material and moral interests of society.

6. The alienation of the State lands gives to the landowner the whole improvement in value from the increase of population and national works. The State Landlord preserves all for the benefit of the people.

7. Land is the State capital, the primal source of food and wealth, and in parting with it our legislators have not only most iniquitously limited the field of profitable employment, but have burdened the people needlessly with double taxation—the one a highly unjust system to provide a general revenue; the other a direct tax on food and the necessaries of life, to enable landlords to live in idleness by the labour of others.

8. A rent on State lands being light, and for a manifest benefit, would meet all the requirements of a just and desirable means of raising revenue. It would be easily and cheaply collected, and

[1] Shortly before his death he wrote to Mr John Ross of Melbourne: "I am very glad to see the progress of the Land Tenure move in Victoria. Now is the time to stop the alienation of public lands, before the great mass of them is granted away."—Mr W. Gresham, of Sandridge (Victoria), who was at the head of this movement, was unfortunately drowned in a boat accident in May 1875. The league had published seven tracts, which are worth reading.

would greatly reduce the expenses of government by rendering unnecessary some of the present costly and otherwise hurtful departments.

9. While strictly preserving the right of ownership in land for future generations, the greatest possible facilities for actual and productive settlement may be afforded.

10. The advantages of almost free land, and the total absence of taxation, would ensure an unexampled condition of steady progress and general prosperity.

11. With an absolute freedom from taxation, and full and unfettered scope for industry, every inhabitant of the country would enjoy a beneficial interest from his share in the state lands, whether occupying a portion of these or not.

12. "The best political economy is the care and culture of men." And such a use of the common patrimony, the gift of God to all, would not only promote to the utmost the material welfare of society, but would raise us mentally in the scale of nations, by affording the most liberal culture of which each is capable; special privileges, which should be deemed the inherent right of every member of the community.

13. Acting on these principles we would not only do our duty to our own people by conferring on them all the advantages possible with our present knowledge of political and economic science; but would prove to the world at large what may be done for the progress of humanity by an enlightened appreciation of the circumstances in which we find ourselves placed.

Objects.

1. The immediate cessation of the sale of all Crown lands.

2. The fee simple of the public domain to vest in perpetuity in the State (that is the people in their corporate capacity).

3. Occupancy, with fixity of tenure, and right of transfer, subject to rental for revenue purposes.

4. Land already alienated from the State to be re-purchased by the State. No re-sale to individuals to be permitted.

5. The gradual abolition of all indirect taxes whatever. The revenue of the State to be derived solely from the rental of the land.

According to Mr R. Savage, who comments on this programme in *Tract No.* 7 published by the *Land Tenure Reform League*, the commune would manage the lands, as the Hindoo villages did formerly. It would let them, would collect the rent, would pay into the Treasury the proportion of the tax due,

and would retain the rest for the local requirements of education, roads, police, &c. The numerous advantages offered by communal landed property, as compared with separate property, have been well stated by M. Préveraud, a proprietor cultivator[1]. The commune would be able to divide the land into reasonable farms, just as the English landlord does, and to apply to it a good system of manure[2], irrigation, and planting.

We cannot here discuss this system fully. We will merely notice a few points which seem to be beyond dispute. It is certainly a crime against posterity to alienate for a dollar an acre communal lands which, in fifty years, will be worth a hundred times as much, and the revenue of which would be sufficient to support the whole public service on a magnificent scale. To induce private enterprise to cultivate public lands, there is no necessity to alienate the fee simple: a lease for 90 years is enough, as a grant for a shorter term is sufficient in the West End of London for the construction of palatial residences, and on the Continent for the construction of all the railroads in existence. To the individual whose life is so short, a tenure of 90 years is equivalent to perpetual possession; while to the nation, the resuming possession of the soil is a guarantee of future safety.

The net produce of the soil is now absorbed by individual expenditure, which contributes nothing in itself to the advancement of the nation. Abolish all taxation which encumbers industry, and at the same time apply the revenue to encourage education, literature, and art, and to extend the means of communication: economical and intellectual progress would receive an incalculable impulse. This is what Australia and the United States might do in the future, if they granted leases of land, instead of selling it as they do now.

Mr Mill truly said that proprietors of the present day unjustly enjoy the increase in the value of their lands and rents, resulting from the general progress of society. This increase of value would accrue to the public who created it, by the

[1] *L'Eglise et le peuple* par M. Edmond Préveraud, Paris, 1872.

[2] The town of Groningen in Holland has transformed a vast bog into fertile fields by applying to it, in a scientific manner, the sewage, so generally wasted. See the author's *Economie rurale de la Néerlande*, p. 238.—It is an example which cannot be too distinctly commended to other countries.

gradual increase of the rent demanded by the State or the commune.

In England and in the United States, as in the middle ages, when a charitable or educational institution is established, it is founded on an endowment, which allows of its existing on the revenues accruing therefrom. Thus provision is made for an object of general utility, without its costing any one any thing. Is not this a better means than having recourse to taxation? If all public services were similarly paid entirely by the revenue of State or communal lands, would it not be an immense advantage to society?

The difficulty of administering the public domain would be nothing in comparison of that which certain States, which engage in any industry, now have to deal with. In Java, the Dutch State, regarding itself as proprietor, not only collects the rents of the lands of the *dessas*, but on one part of the public domain it has coffee plantations, of which it superintends the cultivation, and gathers and sells the crops[1]. The State is

[1] In Java, State cultivation attains enormous proportions. In 1873, sugar occupied 27,460 *hectares*, and coffee about 176,252 *hectares*. In 1872, the sugar demanded the labour of 220,706 persons; and the coffee that of 708,980 families, or about 2,000,000 persons.—The cultivation of sugar brought the State an income of 4,318,982 florins; that of coffee in 1871, 40,488,422 florins in Java and Menado, and 6,674,159 florins in Sumatra: in all a total of 47,162,581 florins, deducting 15,240,108 as the cost of production.—The rent of land gives the State a further revenue of 15,000,000 florins, and the tin mines of Banca, also worked by the State, 5,992,869 florins in 1871. It is estimated, that the rent of land does not exceed 10 per cent. of the gross produce, which is extremely little.—The net surplus, paid into the exchequer of the Mother Country, amounted in 1871 to 25,688,951 florins. In Java, the population increases more rapidly than anywhere else—it amounted to 17,298,300 at the end of 1872—and its condition improves at the same time, which is a proof that the production of wealth does not suffer by State monopoly.—The author owes the preceding *data* to the kindness of M. Franssen Van de Putte, colonial minister of the Netherlands.

In Belgium, France, and most other countries, hospitals have various properties, which they manage perfectly. It would not be more difficult to administer all the lands of the commune. In Russia, the State receives the revenue of all the Crown lands, which comprise a great part of the territory. England presents another example of a department administering vast landed estates in the board which administers the church property, coming from the fusion of particular ecclesiastical foundations. The income amounted in 1872, to £1,253,245.—See *Twenty-fifth Report from the Ecclesiastical Commissioners for England.*

Another very interesting example of a vast territory managed by a collective administration, is that of the *Société autrichienne*, the *Staats-Bahn*, which received from the State in Austria an area of 130,000 *hectares*, with 135,000 inhabitants.—The Society has improved the agriculture of the district, has opened coal and iron mines, regulated the management of forest, created manufactures and so considerably increased the general production. It is not therefore im-

not contented with the part of proprietor, an easy function according to M. J. Say, but it is engaged in agriculture and commerce, which is certainly an arduous undertaking. In Belgium the State manages the railways, as complicated a work as we can conceive, demanding technical and commercial knowledge, and an organism of machine-like regularity. If the State is capable of administering a network of railways, it must be still better able to collect a rent instead of a land tax by means of its receivers. Therefore, we may admit that new States do violate the right of future generations, by taking from them their domain in the constant alienations which they effect.

Apparently some colonies are beginning to understand that they need not alienate the fee simple of their lands in order to get them cultivated. Thus in Java, a law of April 9, 1870 (*Regeling der uitgifte in erfpacht van gronden in Nederlandsch Indie*) empowers the government to grant hereditary leases (*erfpacht*) of unoccupied lands for 75 years. A law of 1867, passed in the province of Nelson, New Zealand, empowers the Board of Uncultivated Lands to grant leases of 14 years of unoccupied lands, renewable at the expiration for a new term of 14 years, at double the original rental. A *lease* must not comprise less than 50 acres, or more than 10,000[1].

On the East coast of New Zealand, the Maoris have formed a league, the object of which is the total suppression of the sale of land and the substitution of leases in its place. The son of a New Zealand chief, who had been sent to London to study, and had gone through a course of law at the Temple, was at the head of the movement. The idea is ingenious; for if the Maoris lease their lands instead of selling them, they may hope to become one day proprietors of a fertile and well cultivated territory, with towns, farms and mines; and they will thus eventually have incomes to rival those of the Dukes of Westminster or Devonshire. But would it not be better if all this increase of wealth some day accrued to the State?

possible for a collective corporation to perform the part of a great landowner, with advantage to all concerned.—On this subject see the article by M. Bailleux de Marisy, *Revue des Deux Mondes*, April, 1874.

[1] *An Act for Leasing Crown Lands in the Province of Nelson, New Zealand, anno tricesimo primo Victoriæ reginæ*, No. 51.

CHAPTER XXV.

LANDED PROPERTY IN EGYPT AND TURKEY.

LANDED property has undergone many vicissitudes in Egypt[1]; and yet the cultivation has hardly altered under the various systems. Under the Pharaohs[2], the soil seems to have belonged to the sovereign. The Koran sanctions the same principle: nevertheless the Caliphs for the most part respected the hereditary transmission of its occupation or enjoyment. After the Turkish conquest, the Sultan Selim applied the principle of the Koran more rigorously. He formed many lands into a domain, and appointed a *Defterdar* to administer them. The old occupiers were henceforth only regarded as usufructuaries. The successor had to purchase the continuation of the tenancy by a tax arbitrarily determined. The mamelukes took advantage of their power to seize possession of lands, and the class of *moultezins* was thus formed. They were about six thousand in number; and their right was nearly that of absolute ownership. The lands of the *moultezins* were of two kinds. In one the fellahs had a right of hereditary occupancy, paying a tax to the State, and a rent to the *moultezins:* the others were cultivated directly by the proprietors; these were the *oussieh* lands. They had to pay a very high duty on alienation, otherwise they returned to the State. The property of the mosques, *waqfs,* was very considerable, and constantly extending. Lands were de-

[1] The data in this chapter are borrowed from a note of Colucci Bey on property in Egypt, in the *Bulletin de l'Institut égyptien;* from a treatise of the advocate Gatteschi on the same subject, and from notes collected in Egypt in 1869.

[2] Herodotus relates (Bk. II. c. 109) that "Sesostris divided the soil of Egypt among the inhabitants, giving each a portion of land of equal extent, and deriving his principal revenue from the rent which the occupiers had to pay every year."

vised or given to the mosques, the right of occupation being reserved, because by this means the State exactions were avoided. For the same reason at the commencement of the middle ages, the *allods* were transformed into *benefices* and *fiefs*. The State, to put a stop to this practice, made its consent necessary to the validity of every gift or legacy to a mosque.

Mehemet Ali applied the principle of the Koran even more strictly than Selim. He endeavoured to bring all the soil into the hands of the State. He took back the lands of the *mamelukes* and *moultezins*, allowing them a certain compensation and a temporary usufruct of the *oussieh* lands. He also took possession of the *waqfs* property, except gardens and houses. Mehemet Ali is known to have treated all Egypt as his private property. He regulated cultivation; established manufacturies and places of instruction; and himself engaged in commerce[1]. It is perhaps the most curious instance of communistic centralization which history tells of. From that time, private property has been gradually reconstituted by the grants of the sovereign or the tolerance of the State. Finally, the edict of Saïd Pasha in 1858 accords to the precarious possession of the fellahs, though theoretically subject to the eminent domain of the State, rights which border on absolute property.—Hereditary succession is recognized, even for females. Lands never return to the State except in default of heirs, and, in this case, the village can claim them in precedence of the State.—Mortgage is recognized under the form of a sale *à réméré*, that is liable to redemption; but notice must be given to the authorities.—Whoever reclaims uncultivated land becomes proprietor of it. The government cannot eject anyone, except on payment of a fair indemnity. It must, however, be added that by means of the tax, the government effectually takes rent from the lands of the fellahs; who, both in person and property, are really in its hands.

Lands are divided into two classes, the *moulk* lands, over which the occupiers have full power of disposition; and the *mirieh* lands, the occupiers of which are mere usufructuaries. Theoretically, the latter cannot be transferred without the authority of the sovereign. The greater portion of the soil is *mirieh*.

[1] *Histoire de l'Égypte sous le gouvernement de Mohammed-Ali*, by F. Mengin.

There is also a distinction between *acherieh* lands of Mussulman origin, subject to the tithe in virtue of the Koran, and the *kharadjié* lands, formerly conquered, but left in the hands of the vanquished inhabitants, conditionally on the payment of tribute. The sovereign at one time made grants of lands on condition of military service. These were the *zimmets* and *timars*, or great and little fiefs. They were only descendible in the male line. These fiefs have been abolished. As in the *Mark* or in Java, when the cultivation is abandoned, the soil returns to the State. Cultivation is the condition of occupancy and of ownership.

The constitution of property in Turkey is similar to what it is in Egypt. We here transcribe a sketch of it, as given in some interesting letters, which appeared in the *Economiste français* (September, 1873).

With the exception of the *Mulk* lands which are private property, the soil has but one proprietor,—the State. This, however, is the classification of land as established by the old law (*Multequa*), the principal provisions of which have been re-enacted in the law at present in force, that of June 21, 1858:—

1. *Mulk* lands, the absolute property of individuals;

2. *Emirié* land, the domain of the State, granted by it, on certain conditions, to individuals;

3. *Vacoufs*, property that is tied up. The *vacoufs* cannot be compared to what we understand in Europe by lands in mortmain, because, besides the grants made for a religious object, they comprise a great quantity of individual property tied up with an entirely different motive, and on a peculiar system which will be explained;

4. *Metrouké* lands, belonging to the State, and granted by it for public use;

5. *Mevat* (dead) lands, belonging to the State, and granted to individuals at its pleasure.

Mulk lands.—One might suppose, from the meaning of the word *mulk*, that these lands were all free, and that there was no difference between them. Such a conclusion would, however, be incorrect.

These lands are, in fact, divided into four classes; and the rate of taxation is not the same for all. Thus there is the *melkiiet*, the *uchriiè* and *kharadjiiè*. *Melkiiet* land is that of which the ownership is governed entirely by the rules of the religious law.—*Uchriiè*, or tithe land, is that which was divided, at the time of the conquest, among the conquerors, and given them in full ownership.—*Kharadjiiè* lands are those which, at the same time, were left, on recognized titles, in the possession of the natives (non-Mussulmans).

These *kharadjiiè* lands are subject:—some to the *kharadji-mouquaumè*, that is the proportional tax, which, according to the importance of the produce, may rise from one-tenth to one-half of the harvest; the others pay the *kharadji-muvazzat*, a fixed tax on the land. *Uchriiè* and *kharadjiiè* land, on the death, without heirs, of the owner, returns to the State domain, and becomes *émirié* land.

Thus there exist even for *mulk* lands, legal intricacies, which in practice are an impediment to their free alienation.

EMIRIE LANDS.—*Emirié* lands, constituting the larger portion of the territory of the Empire, belong to the State. They are derived, in great measure, from the old fiefs, which were granted to military chiefs, on condition of their rendering personal aid, at the head of a certain number of horsemen, in wars offensive or defensive. These fiefs were of two sorts: the *Timar* (in Persian, to nourish or tend) and the *Ziamet* (from *zaim*, chieftain).

The law of April 21, 1858, abolished these fiefs. It declared that they were to return to the State; and that the lands dependent on them were to be granted to the inhabitants severally. The provisions of the law have been observed, and the present state of things is as follows:

The grantees received titles (*tapou*) establishing their right of grant (*teçarruf*). The explanation of these two terms will shew that in reality the holder of lands so allotted has no right of ownership. What, then, is the *teçarruf* and what is the *tapou* ?

The *teçarruf* signifies a mode of grant, which gives the holder, it is true, the right to take the fruits of the property, and even, in some cases, to sell it, but under the express condition of annually paying a specified rent to the State. Moreover, the tributary nature of *émirié* land is still indicated by the fact that, in certain cases, the holder is obliged to obtain a new title of possession, which, stating precisely the origin and nature of this land, renews, so to speak, the act of vassalage.

The name *tapou*, which the title of possession bears, also calls attention to the dependent nature of *émirié* land. *Tapou* is derived from the verb *tapmaq* (to render homage, or worship), and hence it bears the sense of act of servitude, or vassalage. In practice, the *tapou* is a title of possession delivered on the payment of a certain sum, by means of which the right of enjoyment and transmission is secured to the holder and his heirs, on conditions determined by law.

Vacouf lands, that is lands tied up for religious purposes, are very extensive in Turkey. They comprise a large portion of the whole territory, and are administered by a special minister, the *Evcaf*. *Vacouf* lands are let on lease, but they bring in a very small income, as the law enacts that the lease shall always be granted at the same rent, and will allow of no increase, even where from competition a higher price is offered. The rents having been fixed long ago, the revenue is almost nothing in consequence of the depreciation of money. The holders of *vacouf* lands have, therefore, a hereditary lease at a nominal rent.

There are two kinds of *vacoufs*. The religious *vacouf*, granted or devised for a pious object; and the customary *vacouf*, which is very similar in its origin to certain benefices of the middle ages.

The customary *vacouf* is land obtained by the mosques at a price very much below its real value. By a sale of this description, the proprietor grants his land to a mosque, for a stipulated price. The peculiarity of this contract is that the proprietor retains the enjoyment of the land, paying an annual rent (*idjarè*), regulated by the amount of the purchase-money. Conventions of this kind were subject to no restriction, but were framed simply and absolutely at the will of the parties. Formerly, these conventions were very common, as the grantor derived numerous advantages from them. In reality, he remained master of the property, and occupied it or let it, as he pleased; in case of debts, the property, being *vacouf*, was protected from judicial procedure. On his death the *vacouf* returned, it is true, to the *Evcaf*, if he had no heirs in the first degree; but he could in some measure obviate this inconvenience by assigning his rights to another person. Finally, by this means, he withdrew his property from liability to the *Chefâia*, or "*retrait vicinal*," exercised by every proprietor over land contiguous to his own, and giving him precedence, in case of its sale, over every other purchaser. The mosque, on its part, found the following advantages in the arrangement:—a safe investment for its funds, guaranteed by the land; exemption from repairs, which the tenant had to execute; the benefit of all repairs and improvements carried out on the property; the duties which had to be paid to the mosque on the proprietor disposing of his rights in favour of a third party (*droits de Moukatea*); finally, the right of succession to the property, which devolved absolutely on the mosque, on the death of the tenant without children.

Vacouf lands as well as *émirié* land were in no way set free by the laws of May 21, 1858, and of June 18, 1867. Since the promulgation of these laws, as well as before, they have borne in the highest degree the character of "*immobilisation*" and dependence from the State.

The following are briefly the restrictive provisions, which in actual practice encumber *émirié* lands, as well as the greater portion of *vacoufs*.

The meadow land on these domains cannot be broken up and brought into cultivation without permission of the authorities. The occupiers are forbidden to work these lands for the manufacture of bricks or tiles, without similar permission. On contravention of this rule, they will have to pay the price of the land so used, according to its value in the district. No occupier may plant, on his authority, any vines or fruit trees to form a vineyard or garden. In case of contravention, the Treasury has, for three years, the power of removing the trees. After that time, the use of the fruit trees belongs to those who planted them, subject to an annual payment of tithe. In any case, trees, whether fruit-bearing or not, belong to the State, the occupier only taking the produce. No new buildings

may be raised on *émirié* land, without previous permission from the proper authorities. If this rule is infringed, the administration may order the destruction of the buildings. The holder of land by *tapou* (*émirié* property) may sell it to whomsoever he pleases, subject however to the express condition that he has previously obtained permission of the competent authority. Without such sanction, any sale of *émirié* land is null and void. If the occupier of an estate, on which there are *mulk* trees, sells it to any other than the owner of such trees, the owner of them shall be entitled for six years to claim the land, and to recover it on payment of its value at the time he makes his demand.—Land sold to an inhabitant of another village may be recovered, any time within a year, by the inhabitants of the village in which the land is situated, on re-payment of the purchase-money. This communal *retrait* has existed everywhere. All land, which shall not be cultivated directly by the holder, or indirectly by way of loan or lease, and which shall remain idle for three consecutive years, shall be submitted to the formality of *tapou*, whether the holder be present or absent. Such land shall be put up for sale, and adjudged to the highest bidder.

The holders of *émirié* and *mevcoufé* lands are not entitled to mines discovered on the property of which they are usufructuaries, nor to claim any share in them.—Mussulman land cannot pass by descent to non-Mussulman relatives. The sale and grant of *émirié* lands on conditions held to be illegal by the *religious* law shall not be valid. This sanctions all kinds of arbitrary and vexatious proceedings against non-Mussulmans, the religious law being very severe against them.

CHAPTER XXVI.

THE RIGHT OF PROPERTY AND HEREDITARY PATRIMONY.

As we have seen, primitive nations, in obedience to an instinctive sentiment, recognized in every man a natural right to occupy a portion of the soil, from which he might derive the means of subsistence by his labour; and, accordingly, they divided the collective property of the tribe equally among all the heads of families.

This mode of regarding the right of property has been frequently touched upon, but, I think, it has been expounded by none better than by two philosophers; one French, the other English, who, working independently, have made use of nearly identical terms. They are M. F. Huet in his work *le Règne social du christianisme,* Bk. III. c. v.: and Mr Herbert Spencer, in his *Social Statics,* c. ix.[1]

M. Huet writes as follows :—

"Publicists, economists, and statesmen vie with one another in repeating that without property there can be no liberty. Nothing is more unquestionable. Property, or the right of regarding as one's own a determinate portion of matter, of enjoying it or disposing of it at will, without trenching on the rights of another, always constitutes an essential foundation of a true form of society.

"Either words have no meaning or to place property among natural rights implies that the original title of investiture in landed property is the quality of man; that the quality of man engenders of itself, directly, a right to a definite quantity of such property—the original

[1] The necessity of the return of landed property to the collective domain of mankind, has been exhaustively treated by M. le Baron de Colins in his numerous writings, and amongst others in his book, *L'Economie politique source des révolutions;* by his disciple M. Agathon de Potter in his *Economie Sociale,* 1874, and in the *Revue de la Philosophie de l'avenir,* 1876,—but the theory of the natural, individual right of property and appropriation is not sufficiently illustrated on juridical grounds.

property, which becomes for every one the source, the foundation and the means of obtaining every other kind.

"It is the most irrefutable consequence of the right of existence. It must be an equal right; for the necessity of the means of existence is alike for all. No one, certainly, should live at the expense of another: but the man, who has not forfeited his right, is entitled to live independently; he has a right to be so placed, as that his labour and his means of existence shall not be dependent on the pleasure of others. However free he may be in person, if he does not, of natural right, possess some capital; if he is not a proprietor, as well as a man and a labourer, he only produces, and only lives by the permission of his fellow-men:—actually he is in servitude. It cannot be too often repeated—property is an absolute condition of liberty. We may not disregard mankind's first and most sacred of titles, the title to the possession of property[1]."

To carry out this natural right of property, M. Huet proposes that the law should enjoin, "that at every decease, the free portions of the patrimony should go to all the young labourers equally. Succession, constituted on these socialistic principles, would thus reproduce, in each generation, the fraternity of the primitive partition."

"The morality of succession would be improved by such generalization: the temptations to which the present system exposes needy and eager heirs are only too well known. Each inheritance is a prey for the vilest passions to quarrel over. Too often we hear hateful hopes expressed. Far from weakening the family, the right of inheritance would purify and strengthen it. It creates a feeling of security. The fault or misfortune of the father does not condemn an unfortunate posterity to permanent inferiority. Under this system of real socialism, there exists in fact a general confidence between father and children.

"Now, the children of the poor are cast naked on the bare earth, as though they were born in a savage state. They have no

[1] The great German philosopher Fichte has expressed the same idea: "The mission of the State is to keep every one in possession of what belongs to him, to secure him his property and to guarantee the same to him. The end of human activity is to live, and every individual is entitled to be put into a position to support life. The distribution ought to be effected in such a way as that every one may live by his labour. If any one is in want of the necessaries of life, it should be the consequence of his own fault and not of the acts of others. The portion which ought to come to every one for this purpose belongs to him of right; and if he is not yet in possession of it, he should have the means of obtaining it. In a State, regulated by reason (*Vernunftstaat*), he will obtain it. In a distribution effected by force and chance, before the awakening of reason, all have not attained to it, because some have taken more than is due to them. To say, everything will settle itself, every one will always find labour and bread, and to trust in this way to chance, is to act contrary to the demands of justice and right."—Fichte, *Der geschlossene Handelstaat*, B.I., K.1, s. 399, 402,—K.7, s. 446.

ties, no ancestry. The right of patrimony would connect them once more with the human race. It is a marvellous agrarian law which, without arbitrariness or violence, without putting any limit on property, or despoiling or disturbing any one, secures for ever the independence of the labourers and maintains the long succession of generations on a level of equality."

What M. Huet proposes is nothing else than the system of landed property in force in the primitive village and in the Allmend.

Let us now see what Mr Herbert Spencer says:—

"Given a race of beings having like claims to pursue the objects of their desires—given a world adapted to the gratification of those desires—a world into which such beings are similarly born, and it unavoidably follows that they have equal rights to the use of this world. For if each of them 'has freedom to do all that he wills provided he infringes not the equal freedom of any other,' then each of them is free to use the earth for the satisfaction of his wants, provided he allows all others the same liberty. And conversely, it is manifest that no one, or part of them, may use the earth in such a way as to prevent the rest from similarly using it; seeing that to do this is to assume greater freedom than the rest, and consequently to break the law.

"Equity, therefore, does not permit property in land. For if *one* portion of the earth's surface may justly become the possession of an individual, and may be held by him for his sole use and benefit, as a thing to which he has an exclusive right, then *other* portions of the earth may be so held; and eventually the *whole* of the earth's surface may be so held; and our planet may thus lapse altogether into private hands. Observe now the dilemma to which this leads. Supposing the entire habitable globe to be so enclosed, it follows that if the landowners have a valid right to its surface, all who are not landowners, have no right at all to its surface. Hence such can exist on the earth by sufferance only. They are all trespassers. Save by the permission of the lords of the soil, they can have no room for the soles of their feet. Nay, should the others think fit to deny them a resting-place, these landless men might equitably be expelled from the earth altogether. If, then, the assumption that land can be held as property, involves that the whole globe may become the private domain of a part of its inhabitants; and if, by consequence, the rest of its inhabitants can then exercise their faculties—can then exist even—only by consent of the landowners; it is manifest, that an exclusive possession of the soil necessitates an infringement of the law of equal freedom[1]. For, men who cannot 'live and move and

[1] Certain German jurists, such as the eminent Professor Zachariæ, condemn the right of exclusive property in the soil in even stronger terms than Herbert Spencer does:—"The rent of land," says Zachariæ in his work, *Büchern vom Staat*, "is a reduction of the wages which might belong entirely to the labourer,

have their being' without the leave of others, cannot be equally free with those others" . . .

"On examination, all existing titles to such property turn out to be invalid; those founded on reclamation inclusive. It appears that not even an equal apportionment of the earth amongst its inhabitants could generate a legitimate proprietorship. We find that if pushed to its ultimate consequences, a claim to exclusive possession of the soil involves a landowning despotism. We further find that such a claim is constantly denied by the enactments of our legislature. And we find lastly, that the theory of the co-heirship of all men to the soil is consistent with the highest civilization; and that, however difficult it may be to embody that theory in fact, Equity sternly commands it to be done."

Neither M. Huet nor Mr Herbert Spencer appears to have thought that this right to patrimony or joint-heirship could be put into practice immediately, in the midst of the imperfect and complicated relations of modern society. They have framed an ideal scheme;—but the remarkable point is that this ideal is identical with the form of landed property, spontaneously applied by primitive societies of every nation and every country. The future, to which they look forward, would thus only reproduce the past, but in other forms.

if the soil were not the object of an absolute monopoly. All the sufferings, against which civilized nations have to struggle, may be referred to the exclusive right of property in the soil as their source." (*Alle die Leiden, mit welchen civilisirte Völker zu kämpfen haben, lassen sich auf das Sondereigenthum an Grund und Boden als ihre Ursache zurückführen.*) The philosopher Krause (*System der Rechtsphilosophie*, herausgg. von Karl Röder, 1874), and his eminent disciple, Professor H. Ahrens (*Naturrecht*), regard property as a natural right and as a necessary condition of man's liberty and individual development. Krause advocated a return to the old German law which sanctions this right.

CHAPTER XXVII.

THE THEORY OF PROPERTY.

A STUDY of the primitive forms of property is essential in order to form a solid foundation for the theory of property. Without understanding the real facts, the majority of jurists and economists have based property on hypotheses which are contradicted by history, or on arguments which lead to a conclusion quite opposite to what they wished to establish. They strove to shew the justice of quiritary property, such as the Roman law has bequeathed to us; and they succeeded in proving quite another thing,—that natural property, such as it was established among primitive nations, was alone in accordance with justice.

To shew the necessity of absolute and perpetual property in land, jurists invoked universal custom, *quod ab omnibus, quod ubique, quod semper*. "Universal consent is an infallible sign of the necessity and consequently of the justice of an institution," says M. Leon Faucher[1]. If this is true, as the universal custom has been the collective ownership of land, we must conclude that such ownership is alone just, or alone conformable to natural law.

Dalloz in his *Répertoire*, at the word *Propriété*, and Portalis, in his *Exposé des motifs du Code civil*, assert that without the perpetual ownership of land the soil could not be cultivated; and, consequently, civilization, which rests on agriculture, would be impossible. History shews that this assertion is not true. Full ownership, as applied to the soil, is an institution of quite recent creation. It was always the exception; and cultivation

[1] *Dictionnaire de l'Economie polit.*, voce *Propriété*.

executed by the proprietor himself has been still more exceptional. Agriculture commenced and was developed under the system of common ownership and periodic partition. In the provinces of the Roman empire the soil was only occupied by title of usufruct. "*In solo provinciali,*" says Gaius, II. 7, "*dominium populi Romani est vel Cæsaris, nos autem possessionem tantum et usufructum habere videmur.*" In the middle ages, the free-allod was the exception; the *precarium,* and the *beneficium,* the fief,—that is, a sort of hereditary usufruct,—was the rule; and agricultural labour was executed by "*mainmortables*" serfs, who, so far from being owners of the soil they cultivated, were not even owners of their own moveables, for the right of succession was denied them. Even now, in England, houses are commonly built on land held by a mere temporary lease; and the soil is cultivated, as in most other countries, by lessees, whose occupancy is only secured for a few years, and by tenants at will. For man to plough and sow, it needs but to secure him the fruit of his labour; and for this, possession for a year is, in strictness, sufficient. This we see in Java, and even nearer home, in the Belgian and French Ardennes, or in the wastes of Westphalia. For the execution of lasting improvements, and even for the introduction of intensive, scientific cultivation, there is no necessity for more than a lease of from nine to eighteen years. We see this everywhere. In short, the cultivation of the soil has nearly always been accomplished by the temporary possessor, hardly ever by the perpetual proprietor.

Another very common mistake is to speak of "property" as if it were an institution having a fixed form, constantly remaining the same; whereas in reality it has assumed the most diverse forms, and is still susceptible of great and unforeseen modifications.

We will examine the different systems which have been put forward in explanation of the origin and justice of property. There are six principal ones. The Roman law gives this definition of property: *Dominium est jus utendi et abutendi re suâ, quatenus juris ratio patitur.* The definition of the *Code civil français* is fundamentally the same: "Property is the right of disposing of and of enjoying things in the most absolute manner,

provided that no use is made of them prohibited by laws and regulations."

1. Roman jurists and most modern ones have considered occupancy of things without an owner as the principal title conferring property. *Quod enim nullius est id, ratione naturali, occupanti conceditur*, says the Digest. This theory can be easily maintained, so long as it only has to do with moveables which can be actually seized and detained, like game taken in the chase, or goods found; but it encounters insurmountable difficulties directly we attempt to apply it to the soil. In the first place, history shews that the earth is never regarded by men as *res nullius*. The hunting ground of hunting tribes, or the pastures of pastoral nations, are always recognised as the collective domain of the tribe; and this collective possession continues, even after agriculture has begun to fertilize the soil. Unoccupied land has therefore never been regarded as without an owner. Everywhere, in former times as in our own, it was considered as belonging to the commune or the State, so that there was no room, in former times any more than in our own, for acquisition by occupancy.

Most of the partisans of this theory do allow a sort of primitive community, *communio bonorum primæva*. But they add, that in order to obtain individual ownership of things which they took possession of, all men tacitly agreed to renounce, each for himself, this undivided right over the common domain. If it is the historic origin of property, that they seek to explain in this way, history knows of no such agreement. If it is meant as a theoretical and logical origin, in this case they lapse into the theory of contract, which we shall examine further on.

M. Thiers, in his work *De la Propriété*, borrows the idea of Cicero, who, comparing the world to a theatre, asserts that every one makes the place he occupies his own: *Theatrum cum commune sit, recte tamen dici potest ejus eum locum quem quisque occupavit.* The example goes against the theory which he is endeavouring to establish: for, in the first place, the spectator is only in possession of his place, and his possession merely gives him a temporary right and not the perpetual ownership; and, secondly, he occupies but one place. Hence no one could at best make his own more than the portion of the soil which he

actually retains and can cultivate. M. Renouard, in his excellent work, *Du Droit industriel,* recognises this: "Of strict natural right, the occupation of land presents serious difficulty in execution. It only gives a right over the soil actually held in possession." Without this limit, in fact, a single man might, by some manifest sign of his intention, occupy a whole province.

Occupation is a fact resulting from chance or force. There are three of us on an island large enough to support us all, if we have each an equal part: if, by superior activity, I occupy two-thirds of it, is one of the others to die of hunger, or else become my slave? In this case the instinct of justice has always commanded an equal partition. Hence we do conceive of a right of acquisition, anterior and superior to the simple fact of apprehension, which it is called upon to limit and regulate.

Most jurists should answer the question, whether the soil can be the subject of exclusive and perpetual ownership, in the negative. "For the sovereign harmony," says M. Renouard, "has exempted from the grasp of private ownership the chief of those things without the enjoyment of which life would become impossible to those who should be excluded in case of their appropriation." The soil is obviously among the number of such things, as also is the air and water. For man cannot live on sunlight and dew, and the possession of some portion of productive capital is necessary for him to obtain his means of support. The general principles of jurists, accordingly, commend the universal custom of primitive nations, which reserved to the tribe the collective ownership of the soil.

According to Cousin, property is the necessary consequence and condition of liberty. Liberty is sacred; property should be no less so. But liberty is only respected when conformable to the law; so property can only be respected when determined by justice. "Liberty and property demand and support each other," says M. Renouard. Undoubtedly; but as all should be free, so should all be proprietors. "Property," says this eloquent jurist, "is the condition of personal dignity." In that case it is not allowable to make a privilege of it, unless we wish to see the mass of mankind degraded and enslaved.

2. The second theory of property would make labour its basis. This is the one adopted by economists, because, since Adam Smith, they have attributed to labour the production of wealth. Locke was the first to expound this system clearly, in his treatise on *Civil Government,* c. IV. Briefly, this is a summary of what he says on the subject:—

God gave the soil to mankind at large, but as no one enjoys either the soil or that which it produces unless he be owner, individuals must be allowed the use, to the exclusion of all others.

Every one has an exclusive right over his own person. The labour of his body and the work of his hands therefore are likewise his property. No one can have a greater right than he to that which he has acquired, especially if there remain a sufficiency of similar objects for others. My labour, withdrawing objects from the state of community, makes them mine. But the right of acquisition must be limited by reason and equity. "If one exceeds the bounds of moderation and takes more than he has need of, he undoubtedly takes what belongs to others."

The limit indicated by Locke is, for moveable things, the amount which we may take without allowing them to spoil. For land the limit is the amount which we can cultivate ourselves, and the condition that there be left as much for others as they require. "The measure of property," he says, "nature has well set by the extent of man's labour and the conveniences of life: no man's labour could subdue, or appropriate all; nor could his enjoyment consume more than a small part; so that it was impossible for any man, this way, to intrench upon the right of another, or acquire to himself a property, to the prejudice of his neighbour, who would still have room for as good and as large a possession. This measure, we see, confines every man's possession to a very moderate proportion, and such as he might appropriate to himself, without injury to anybody."

So according to Locke the great principle is this: "Every one ought to have as much property as is necessary for his support."

The necessity of private property results "from the conditions of human life, which require labour and some material on which it may be exercised."

As Locke admits on the one hand an equality of right in all men (ch. I. § 1), and on the other hand the necessity for every man to have a certain portion of material, on which to live by his labour, it follows that he recognizes a natural right of property in every one.

This theory is certainly more plausible than that of occupation. As M. Röder very justly remarks in his work, *Die Grundzüge des Naturrechts*, § 79, labour establishes between man and the objects which he has transformed a far closer connexion than mere occupation, whether symbolical or even actual. Labour creates value; accordingly it seems just that he who has given birth to it, should also enjoy it. Moreover, as no one can legitimately retain more than that which he can cultivate, there is a limit which prevents usurpation. But no legislation ever allowed that labour or *specification* was alone a sufficient title to establish property. He who is not already owner of the land or the material transformed, acquires nothing by his labour but a right to compensation or to remove the buildings and plantations set up on another man's land. Kant had already remarked that the cultivation of the soil was not sufficient to confer the ownership. "If labour alone," says M. Renouard (*Du Droit industriel*, p. 269), "conferred a legitimate ownership, logic would demand that so much of the material produced, as exceeds the remuneration of such labour, should be regarded as not duly acquired."

Nay more: according to this theory the owner would manifestly have no right to the full value of land let to a tenant. The tenant would become co-proprietor in proportion as the land was improved by his labour; and, at the end of a certain number of years, the proprietor would entirely lose all right of ownership. In any case, he could never raise the rent; for to do so, would be to appropriate the profits of another's labour, which would obviously be a robbery.

If labour were the only legitimate source of property, it would follow that a society, in which so many labourers live in poverty and so many idlers in opulence, is contrary to all right and a violation of the true foundation of property.

The theory so imprudently adopted by most economists, and even by M. Thiers in his book, *De la Propriété*, would therefore

be a condemnation of all our modern organization. Jurists have violently opposed the theory. The summary of their objections may be found in M. Warnkoenig's work, *Doctrina juris philosophica*, p. 121, and in the *Naturrecht* of Ahrens. If labour is the source of property, why should the Institutes and the *Code civil* have said nothing of it[1]? It may be said that labour ought to be the source of all property, but this principle would be condemnatory of the existing organization of society.

3. In order to explain why men abandoned the primitive community, it has been asserted to have been in consequence of a convention, and thus property would be the product of contract. This theory has even less to sustain it than the preceding.

In the first place, when we seek to derive a right from a fact, we are bound to establish the reality of that fact, otherwise the right has no foundation. Now, if we go back to the historic origin of property, we find no trace of such a contract. Moreover, this convention, which we should have to seek in the night of past ages, cannot bind existing generations, and consequently cannot serve as the basis of property at the present time. Convention cannot create a general right, for it itself has no value, except so far as it is conformable to justice. If property is legitimate and necessary, it must be maintained;

[1] M. Thiers, it is true, has not been stopped by certain contradictions. "To every one," he says, "for his labour, because of his labour and in proportion to his labour. We may therefore say dogmatically: *The indestructible basis of the right of property is labour.*" Further on he adds: "In order to labour, man must first seize the material for his labour, that is the land, the indispensable material of agricultural labour, which makes occupation the first act necessary to the commencement of property, and labour the second." Finally he says again: "Every society originally presents the phenomenon of an occupation more or less violent, gradually succeeded by the phenomenon of regular transmission by way of exchange for the legitimate fruits of some labour." Thus the robber need only exchange his spoil for "the legitimate fruit of some labour," to become the legal proprietor. Property has, therefore, for its origin, according to M. Thiers, now labour, now occupation, now robbery legitimated by exchange! Elsewhere he describes a man fishing and growing corn, who says: "This fish for which I have fished with so much patience, and this bread which I have made with such exertion, to whom do they belong?" The human race will answer: "They are mine."—*De la Propriété*, p. 38. And everywhere human laws will attribute the greater part of this fish or this bread, not to him who has gathered them by his toil, but to him who has granted the labourer permission to fish or to till. Thus evidently M. Thiers destroys the basis of quiritary ownership, which he strives to defend.

but a decision taken by our remote ancestors will not entitle it to respect.

Kant holds that *specification* creates a provisional ownership, which only becomes final by the consent of all the members of the society. Kant does not maintain that this consent was a historic fact: he speaks of it as a juristic necessity, or a fact the justice of which commands respect. But the moment we introduce the idea of justice, we are demanding of the general principles of law the sanction of human institutions, and to what purpose is it then to invoke a convention which has never occurred? It is enough to shew that property is conformable to right.

4. Without having recourse to abstract notions of justice or to the obscurities of historic origins, many writers of very different shades have maintained that property is the creature of law.

"Banish governments," says Bossuet, "and the earth and all its fruits are as much the common property of all mankind as the air and the light. According to this primitive natural right, no one has an exclusive right to anything, but every thing is a prey for all. In a regulated government no individual may occupy anything......Hence arises the right of property, and, generally speaking, every right must spring from public authority[1]."

Montesquieu uses nearly the same language as Bossuet: "As men have renounced their natural independence to live under political laws, they have also renounced the natural community of goods to live under civil laws. The former laws give them liberty, the latter property[2]."

Mirabeau said, in the tribune of the Constituent Assembly, "Private property is goods acquired by virtue of the law. The law alone constitutes property, because the public will alone can effect the renunciation of all and give a common title, a guarantee for individual enjoyment." Tronchet, one of the

[1] *Polit. tirée de l'Ecrit.*, Lib. I. Art. 3, 4 propos.

[2] *Esprit des Lois*, Lib. XXVI. c. 15.—Léon Faucher (see *Propriété* in the *Dictionnaire de l'Economie politique*) replies that this primitive community of goods has never been found in a state of nature. The most savage tribes, he says, know *mine* from *thine*. Undoubtedly: but Montesquieu was speaking of landed property; and this was collective in primitive times everywhere.

jurists who contributed most to the formation of the *Code civil*, also said: "It is only the establishment of society and conventional laws that are the true source of the right of property." Touillier, in his commentary on the *Droit civil français*, admits the same principle. "Property," according to Robespierre, "is the right of every citizen to enjoy the portion of goods guaranteed to him by the law." In his Treatise on Legislation, Bentham says: "For the enjoyment of that which I regard as mine, I can only count on the promises of the law which guarantees it to me. Property and the law were born together, and will perish together. Before law, there was no property; banish law, and all property ceases." Destutt de Tracy expresses the same opinion; and more recently, M. Laboulaye, in his *Histoire de la propriété en Occident*, formulates it with great exactness: "Detention of the soil is a fact for which force alone can compel respect, until society takes up the cause of the holder. The laws not only protect property, they give birth to it......The right of property is not natural but social." It is certain, in fact, as M. Maynz remarks, that "the three legislations (Roman, German and Slavonic) which now divide Europe, derive from the State exclusively the absolute power over goods which we designate by the word property or ownership[1]."

If M. Laboulaye and other authors of his opinion only intended to speak of a state of fact, they are right. If I have gathered fruits or occupied a spot of land, my right hand at first, and subsequently the power of the state, guarantee me the enjoyment thereof. But what is it that my strong hand or the power of the state *ought* to guarantee to me? what are the proper limits of *mine* and *thine?* is the question we have to determine. The law creates property, we are told; but what is this law, and who establishes it? The right of property has assumed the most diverse forms: which one must the legislator sanction in the cause of justice and the general interest?

To frame a law regulating property, we must necessarily know what this right of property should be. Hence the notion of property must precede the law which regulates it.

Formerly the master was recognised as owner of his slave;

[1] Maynz, *Cours de droit romain*, 2e édit. p. 682.

was this legitimate property, and did the law, which sanctioned it, create a true right? No: things are just or unjust, institutions are good or bad, before a law declares them such, exactly as two and two make four even before the fact be formulated. The relations of things do not depend on human will. Men may make good laws and bad laws, sanction right or violate it, right exists none the less. Unless every law is maintained to be just, we must allow that law does not create right. On the contrary, it is because we have an idea of justice superior to laws and conventions, that we can assert these laws or conventions to be just or unjust.

At every moment of history and in every society, conformably to the nature of mankind, there is a political and social organization, which answers best to the rational requirements of man, and is most favourable to his development. This order constitutes the empire of right. Science is called in to discover it, and legislation to sanction it. Every law which is conformable to this order is good and just; every law which is opposed to it is bad and iniquitous.

It cannot be maintained that in human society, as in the physical Universe, the existing order is necessarily the best, unless we pretend that all social iniquities are legitimate, because they are necessary, and that every attempt at reform is a folly, if not an attack on natural law. In this case, we should also have to admit that slavery, confiscation and robbery are just directly they are enjoined by law; and then the greatest attacks on right would have to be regarded as the true right. The law does not create right; right must dictate the law.

5. According to certain economists such as Roscher, Mill, and Courcelle-Seneuil, human nature is such as to require property, for without this there would be no stimulus to labour or saving. M. Adolph Wagner calls this system the economic theory of nature. Roscher formulates it thus: "Just as human labour can only arrive at complete productivity when it is free, so capital does not attain to full productive power except under the system of free private property. Who would care to save, and renounce immediate enjoyment, if he could not reckon on future enjoyment?" (Roscher, *Syst.* I. § 77 and 82.)

"Landed property," says Mill, "if legitimate, must rest on

some other justification than the right of the labourer to what he has created by his labour. The land is not of man's creation; and for a person to appropriate to himself a mere gift of nature, not made to him in particular, but which belonged as much to all others until he took possession of it, is *primâ facie* an injustice to all the rest......The private appropriation of land has been deemed to be beneficial to those who do not, as well as to those who do, obtain a share. And in what manner beneficial? Let us take particular note of this. Beneficial, because the strongest interest which the community and the human race have in the land is that it should yield the largest amount of food, and other necessary or useful things required by the community. Now, though the land itself is not the work of human beings, its produce is; and to obtain enough of that produce somebody must exert much labour, and, in order that this labour may be supported, must expend a considerable amount of the savings of previous labours. Now we have been taught by experience that the great majority of mankind will work much harder, and make much greater pecuniary sacrifices, for themselves and their immediate descendants than for the public. In order, therefore, to give the greatest encouragement to production, it has been thought right that individuals should have an exclusive property in land, so that they may have the most possible to gain by making the land as productive as they can, and may be in no danger of being hindered from doing so by the interference of any one else. This is the reason usually assigned for allowing the land to be private property, and it is the best reason that can be given."

Human institutions ought, in fact, to be alike just, and such as to procure the greatest possible happiness for the greatest number. But, as M. Adolph Wagner very well remarks, quiritary property in land is not indispensable for the good cultivation of the soil. In fact we see on all sides, perfectly cultivated lands, which belong to the State, to corporations, to village communities, and to great landowners, but are farmed by temporary occupants. It cannot therefore be maintained that private property in the soil is an economic necessity. As Mr Mill very truly says, if the end aimed at in establishing private ownership of the soil is to create the most powerful

motive for realizing its good cultivation, the ownership should always be assigned directly to the cultivators. In any case, according to Mill, the increased value of the soil, resulting from national activity, should be reserved to the nation, and not granted to sinecurists, who reap the advantage in the form of an increased rental.

The "natural-economical" theory has this great advantage, that by basing property on general utility, it allows of successive improvements in existing institutions by the elimination of what is contrary to equity and the general interests, and by modifications consonant with new wants and technical advances[1].

6. The sixth system regards property as a natural right. In the present day all the advocates of property vie with one another in repeating that it is a natural right; but there are but few of them who understand the import of these words. The philosophical jurists of Germany have however explained it very well. Fichte's theory on the point is this. The personal right of man as determined by nature is to possess a sphere of action sufficient to supply him with the means of support. This physical sphere should therefore be guaranteed to every one, conditionally however on his cultivating it by his own labour. Thus all should labour, and all should also have wherewith to labour. Here are the actual words of Fichte in his excellent work on the French Revolution, *Beiträge zur Berichtigung des Urtheils über die französische Revolution:* "The transformation (*bildung*) of materials by our own efforts is the true juridical basis of property, and the only natural one. He who does not labour cannot eat, unless I give him food; but

[1] The theory of property has never been so well treated as in the excellent work of M. Adolph Wagner, and M. Erwin Nasse, *Lehrbuch der politischen Oeconomie*, I. *Grundlegung*.—According to M. Wagner we must always distinguish between the objects to which property is applied, because it should not be the same for arable land, forests, mines, streams, capital and produce. M. Wagner adopts the "legal" theory, that is to say, he derives property from the law. Undoubtedly it is the decree of the legislator which establishes property and the right of inheritance: but what ought the legislator to decree? This is the question we have to decide. We must therefore go back to the necessities which determine what should be law. M. A. Samter, a banker of Königsberg, adopts the same system as M. Wagner. See his remarkable works, *Die Social-Lehre* and *Gesellschaftliches-und-privat-Eigenthum*, Leipzig, 1877. M. Samter is of opinion that the soil, as well as mines and roads, should belong to the state and the communes, so as to counterbalance the power of private property, the rights of which are much greater, more exclusive and less limited than formerly.

he has no right to be fed. He cannot justly make others work for him. Every man has over the material world a primordial right of 'appropriation,' and a right of property over such things only as have been modified by him." In his book on natural law, *Grundlage des Naturrechts*, Fichte says every man has an inalienable right to live by his labour, and consequently to find the means of employing his hands.

Immanuel Fichte, the son of the great philosopher, maintains similar theories in his book on Ethics, *System der Ethik* (2 B., 2 Th., § 93). The right of possession, according to him, is a direct right, inalienable and antecedent to all law. Property is possession conformable to law, and guaranteed by public power. It is instituted for the general good, from whence it follows that the proprietor not only may not misuse his property, but is even juridically bound to use it well. "We come," says Fichte, "to a *social* organization of property. It will lose its exclusively private character to become a true, public institution. It will not be enough to guarantee to every one his property legally acquired; we must enable him to obtain the property which ought to accrue to him in exchange for his legitimate labour." "Labour is a duty towards oneself and towards others: he who does not work, injures another, and consequently deserves punishment" (§ 97). Every one ought to be possessed of property, says Hegel in his *Rechtsphilosophie* § 49; "*Jeder muss Eigenthum haben.*" Schiller has rendered the same idea in two lines, which contain the whole philosophy of history:—

> Etwas muss er sein eigen nennen,
> Oder der Mensch wird morden und brennen.

"Man must have something that he may call his own, or he will burn and slay."

The same theory is expounded even more completely in the excellent manual on natural law (*Naturrecht*) by M. H. Ahrens. According to this eminent jurist, "law consists in the group of conditions necessary for the physical and spiritual development of man, so far as these conditions are dependent on human will. Property is the realization of the sum of the means and conditions necessary for the development, physical or spiritual, of

each individual, in the quality and quantity conformable to his rational wants. The right of property includes the conditions and means for the *acquisition*, *retaining*, and *employment* of property, and comprises at the same time the judicial actions given to the proper person, for the recovery, the establishment, or the exercise of ownership."

"For every man property is a condition of his existence and development. It is based on the actual nature of man, and should therefore be regarded as an original, absolute right which is not the result of any outward act, such as occupation, labour or contract. The right springing directly from human nature, the title of being a man is sufficient to confer a right of property."

The proof of the truth of this doctrine is that the very persons, who do not recognise it or who would condemn it, have admitted principles which necessarily lead to it.

"Property," says Portalis, "is a natural right; the principle of the right is in ourselves." But if it is a natural right,—a right, that is, resulting from the very nature of man, it follows that we can deprive no man of it. The reason of the existence of property indicated by Portalis, implies property for all. In order to support himself, he says, man should be able to appropriate a portion of the soil to cultivate by his labour. Precisely so: but by man we must understand all men; for all, in fact, are unable to exist except by appropriation of some kind. Hence it follows from the system of Portalis, that the right of appropriation is general, and that no one ought to be deprived of it.

"Property," says Dalloz (*Répert. gén. V°. Propriété*), "is not an innate right, but it springs from an innate right. This innate right, which contains property in the germ, is liberty; and from liberty property flows of necessity." If Dalloz is right, it follows that every man entitled to freedom is also entitled to property.

"Every member of the human race," says M. Renouard, "requires to be escorted by and invested with properties, which shall adhere to him and form his proprietary domain." Very well; but then social institutions must be so regulated, that by the exercise of his right of appropriation every one may attain to the escort and investiture of property.

The instinctive respect for this natural right to property residing in every man serves as a basis for the right to assistance, which is simply its equivalent, and which all legislatures, and notably that of England, have sanctioned. If the primordial right of appropriation be denied, we must allow that Malthus was right: the man who has no property, has not the slightest right to turn it to account: "at the banquet of nature no place is reserved for him; he is really an intruder on the earth. Nature bids him take himself off, and she will not be slow to put this order into execution herself." Nothing can be more true. If man cannot claim the "domain of appropriation," which M. Renouard talks of, he no longer has any right to assistance.

We occupy an island, on which we live by the fruits of our labour; a shipwrecked sailor is cast on to it: what is his right? May he invoke the universal opinion of jurists, and say: You have occupied the soil in virtue of your title as human beings, because property is the condition of liberty, and of cultivation—a necessity of existence, a natural right: but I too am a man, I too have a natural right to cultivate the soil. I may therefore, on the same title as you, occupy a corner of this land to support myself by my labour.

If the justice of this claim is denied, there is no course but to throw the new comer back into the waves, or, as Malthus says, to leave to nature the task of ridding the earth, on which there is no spot to shelter him, of his presence.

If in fact he has not the right to live by the fruits of his labour, still less can he claim to live on the fruits of other people's labour, in virtue of an assumed right to assistance. Undoubtedly we may assist him or employ him at a salary, but this is an act of benevolence, not a juridical solution of the question. If he cannot claim a share in the productive stock to live by his labour on it, he has no right at all. It is no violation of justice to allow him to die of hunger. Need we say that this solution, which seems to be that of the official school of jurists and economists, is contrary alike to the innate sentiment of justice, to natural right, to the primitive legislation of all nations, and even to the principles of those who adopt it?

In the Greek language, in which etymologies often disclose

a complete philosophy, the words for *just* and *justice, τὸ δίκαιον, δικαιοσύνη*, involve the notion of equality of distribution or equal partition. By natural law is understood either, as in the seventeenth and eighteenth centuries, the sum of the laws which human instinct follows in "the state of nature;" or, as in our day, the laws which are conformable to the nature of man, and which reason discloses. Natural law in both these acceptations sanctions the right of property recognized in all.

We have in fact shewn, we believe, that all nations had in primitive times an organization which secured to every man a share in the productive capital. Analysis also shews us that property is the indispensable condition of the existence, the liberty and the development of man. Innate sentiments of justice, primitive right and rational right, all agree therefore in imposing on every society the obligation of so organizing itself as to guarantee to every one the legitimate property which should belong to him.

"Natural rights," remarks M. Renouard, "are, as their name indicates, those which being indissolubly attached to the nature of human beings, spring from it, and live by it alone. They are the condition, not the concession, of positive laws, to which they are antecedent, and for which they form the basis." (*Du droit industriel*, p. 173.)

Rights are absolute[1], insomuch as they conduce to perfect order; but their form is modified, because man, the subject of rights, changes. The most perfect order, constituting the obligatory domain of justice, is not the same for savages and civilized nations. A form of property, which in one place secures the greatest production and the most equitable distribution, may have very different results elsewhere; and in this case it is no longer right. What is the best form of property at any given moment we can only learn from the study of man's

[1] Rights are only absolute within the limits determined by reason and general utility. Property is never an absolute right in the sense of conferring an arbitrary power. The power of disposing of objects is always limited by the same end for which property was originally introduced, that is general utility, or, as the Roman law expresses it, extends *quatenus juris ratio patitur*. The first German civil jurist, Ihering, thus epitomizes the facts of history: "There is no such thing as absolute property,—as property, that is, independent of the consideration of the interests of the community; and history has taken care to inculcate this maxim into the minds of all nations."—*Geist des röm. Rechts*, I. 57.

nature, of his wants and sentiments and the ordinary consequences of his acts. This highest order is "right," because it is the shortest and most direct road to perfection. All that in this order should belong to each member of the human race, is his individual right. The task for which every one is most apt, and in which he can be of most use to his neighbours and himself, ought to be assigned to him, and the instruments of labour necessary to this occupation, in the degree in which they exist, form his legitimate patrimony. So long as men knew of no means of subsistence but the chase, pasturage or agriculture, this patrimony was a share in the soil, a part of the *allmend*. In the middle ages in the towns, where industry was developed and organized, it was a place in the corporation with a share in the ownership of all that belonged to this community. The equalizing movement, which agitates modern society so profoundly, will probably end in obtaining new recognition of the natural right of property, and even a guarantee for its exercise, by means of institutions in harmony with the existing necessities of industry and the prescriptions of sovereign justice. Obviously there can be no attempt at securing to every one a share in the soil, but simply an instrument of labour or a sphere for its exercise.

There must be for human affairs an order which is the best. This order is by no means always the existing one; else why should we all desire change in the latter? But it is the order which ought to exist for the greatest happiness of the human race. God knows it, and desires its adoption. It is for man to discover and establish it.

NOTE A.

The following is the letter of Mr Mill, mentioned in the Preface, in the original French in which it was written by him :—

Avignon, le 17 novembre 1872.

Cher Monsieur,

J'ai lu vos articles dans la *Revue des Deux-Mondes*, du 1er juillet, 1er août et 1er septembre. Votre esquisse de l'histoire de la propriété territoriale, et votre description des différentes formes que cette institution a revêtues à différentes époques, et dont la plupart se conservent encore dans quelque endroit, me semblent très-propres au but que vous avez en vue, et que je poursuis aussi depuis longtemps, celui de faire voir que la propriété n'est pas chose fixe, mais une institution multiforme, qui a subi de grandes modifications et qui est susceptible d'en subir de nouvelles avec grand avantage. Vos trois articles appellent et font désirer un quatrième, qui traiterait de l'application pratique de cette leçon à la société actuelle. C'est ce qu'on trouvera sans doute dans votre livre.

Quant à l'institution des *Allmends*, du moins comme elle existe à présent, vous en avez si peu dit dans vos articles que je ne la connais jusqu'ici que par votre lettre. Il faudrait en avoir bien étudié l'opération pour être en état de juger de son applicabilité à l'Angleterre. Mais je ne crois pas que l'on puisse nier que les réformes à faire dans l'institution de la propriété consistent surtout à organiser quelque mode de propriété collective, en concurrence avec la propriété individuelle : reste le problème de la manière de gérer cette propriété collective, et l'on ne peut trouver la meilleure manière qu'en essayant de celles qui se présentent ; peut-être même est-il à désirer que plusieurs de ces modes existent ensemble, afin d'obtenir les avantages de chacun, et d'en compenser les désavantages. Il me semble donc, qu'à titre d'expérience le système des *Allmends*, constitué de la manière que vous proposez, pourrait être mis en pratique en Angleterre avec avantage. Jusqu'ici les hommes politiques de la classe ouvrière anglaise ne se sont pas portés vers une pareille solution de la question : ils préfèrent que la propriété collective soit affermée, soit à des cultivateurs capitalistes, soit à des associations coopératives de travailleurs. Ce dernier mode a été essayé avec succès, et il jouit déjà d'une certaine faveur. La petite propriété, au contraire, n'a guère de

partisans que quelques économistes et quelques philanthropes; la classe ouvrière paraît la repousser, comme une manière de multiplier le nombre de ceux qui seraient intéressés à s'opposer à une nouvelle institution de la propriété territoriale. Pareil reproche ne peut guère s'adresser au système des *Allmends*, et j'espère que ce système sera pleinement exposé et discuté dans votre volume.

Je vois avec plaisir que vous prenez un peu l'habitude d'écrire pour l'Angleterre. Vous y trouverez un public beaucoup mieux préparé qu'autrefois pour profiter de ce que vous avez à lui dire, et un penseur belge est dans une position de haute impartialité à l'égard des choses du continent d'Europe, qui le rend particulièrement propre à en donner de saines appréciations à des lecteurs qui sont souvent réduits à croire sur parole.

Agréez, cher Monsieur, l'expression de ma haute considération et de ma sincère amitié.

J. S. MILL.

NOTE B.

In England the history of each estate, where known to us, reveals this constant tendency to concentration. Here is an example:

"The occupation of the land on a farm called Holt, in the parish of Clapham, Sussex, consisting of 160 acres, has been traced since the thirteenth century up to the present time. During the thirteenth and fourteenth centuries this farm, which is now occupied by one tenant, was a hamlet; and there is a document in existence which contains twenty-one distinct conveyances of land in fee, described as parcels of this land. In 1400 the number of proprietors began to decrease; by the year 1520 it had been reduced to six; in the reign of James I. the six were reduced to two; and soon after the Restoration the whole became the property of one owner, who let it as a farm to one tenant." *Quarterly Review*, No. 81, p. 250.

NOTE C.

It was not till he had nearly completed the revisal of the proofs of this work that the author was acquainted with the very instructive writings of M. Alb. H. Post, judge at Bremen, *Die Geschlechtgenossenschaft der Urzeit*, and *Die Anfänge des Staats-und-Rechts-*

lebens. In these writings M. Post has brought together various examples of the collective ownership of the soil among primitive nations, which have not been noticed in this volume. According to Nicolas de Damas (Bachofen, *Das Mutterrecht*, p. 21) the Galactophagi owned all property in common. Among the Galactophagi, says Strabo (7, 300), everything was common property, except their weapons; and Nicolas de Damas tells us the same thing of the Sardolybians (Bachofen, *Das Mut.*, p. 21).

In many cases the primitive joint ownership is even found applied to the produce, as among the Iroquois (Waitz, *Anthropologie der Naturvolker*, III. p. 128); at Lukunor in the Caroline Islands (Waitz, v. 2, p. 117); among the Malays (Waitz, v. 5, 141, 149); among most Negro tribes; among the Kabardes of the Caucasus, according to Bastian; in Alasca (Whymper, *Travels in Alasca*, p. 255); at Samoa (Turner, *Nineteen Years in Polynesia*, p. 284); in Circassia (Bell, *Tagebuch*, S. 153); among the tribes of Brazil (Von Martins, *Rechtszustande der Ureinwohner Brasiliens*, p. 34); in the islands of the New Hebrides (Meinicke, *Die Inseln des Stillen Oceans*, I. p. 202); among the tribes of the Dravidian race; in India, and among the tribes of North-West Africa (Munzinger, *Ostafricanische Studien*, p. 493).

CORRIGENDA.

Pp. 10, note, 19, 21, 23, 24, 26. For *J. von Reussler*, read *J. von Keussler.*

P. 83. For *Rowalewsky*, read *Kowalewsky.*

P. 113, l. 15. For *Le sol de la culture en Prusse*, read *Le sol et la culture;* and add the German title, *Der Boden des preussischen Staates.*

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